



# **Aboriginal Land Rights (Northern Territory) Amendment Act 2006**

**No. 93, 2006**

**An Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976*, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	4
<b>Schedule 1—Amendments</b>		5
Part 1—Amendments		5
<i>Aboriginal and Torres Strait Islander Act 2005</i>		5
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>		6
Part 2—Application and transitional provisions		81
Part 3—Review of mining provisions		91





# Aboriginal Land Rights (Northern Territory) Amendment Act 2006

No. 93, 2006

---

---

## **An Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976*, and for other purposes**

[Assented to 5 September 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006*.

---

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	5 September 2006
2. Schedule 1, items 1 to 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 October 2006 (see F2006L03153)
3. Schedule 1, items 4A to 4C	A single day to be fixed by Proclamation.	1 July 2007 (see F2007L01930)
4. Schedule 1, item 8	At the same time as the provision(s) covered by table item 2.	1 October 2006
5. Schedule 1, item 9	At the same time as the provision(s) covered by table item 3.	1 July 2007
6. Schedule 1, items 10 and 11	At the same time as the provision(s) covered by table item 2.	1 October 2006
8. Schedule 1, items 13 to 15	At the same time as the provision(s) covered by table item 2.	1 October 2006
9. Schedule 1, item 16	The day on which this Act receives the Royal Assent.	5 September 2006
10. Schedule 1, items 17 to 33	At the same time as the provision(s) covered by table item 2.	1 October 2006
11. Schedule 1, item 34	The day on which this Act receives the Royal Assent.	5 September 2006
12. Schedule 1, items 35 to 71	At the same time as the provision(s) covered by table item 2.	1 October 2006

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
13. Schedule 1, item 72	The day on which this Act receives the Royal Assent.	5 September 2006
14. Schedule 1, items 73 to 99	At the same time as the provision(s) covered by table item 2.	1 October 2006
15. Schedule 1, item 100	On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	5 September 2007
16. Schedule 1, items 101 to 103	At the same time as the provision(s) covered by table item 2.	1 October 2006
17. Schedule 1, items 104 to 158	At the same time as the provision(s) covered by table item 3.	1 July 2007
18. Schedule 1, items 159 to 162	At the same time as the provision(s) covered by table item 2.	1 October 2006
19. Schedule 1, items 163 and 164	The day on which this Act receives the Royal Assent.	5 September 2006
20. Schedule 1, items 165 to 201	At the same time as the provision(s) covered by table item 2.	1 October 2006
21. Schedule 1, item 202	At the same time as the provision(s) covered by table item 3.	1 July 2007
22. Schedule 1, items 203 and 204	At the same time as the provision(s) covered by table item 2.	1 October 2006
23. Schedule 1, item 205	The day on which this Act receives the Royal Assent.	5 September 2006
24. Schedule 1, item 206	At the same time as the provision(s) covered by table item 2.	1 October 2006
26. Schedule 1, items 208 to 218	At the same time as the provision(s) covered by table item 2.	1 October 2006
27. Schedule 1, item 219	On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	5 September 2007
28. Schedule 1, items 220 to 223	At the same time as the provision(s) covered by table item 2.	1 October 2006
29. Schedule 1, item 224	At the same time as the provision(s) covered by table item 3.	1 July 2007

---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
30. Schedule 1, items 225 to 231	At the same time as the provision(s) covered by table item 2.	1 October 2006
31. Schedule 1, item 232	At the same time as the provision(s) covered by table item 3.	1 July 2007
32. Schedule 1, item 233	At the same time as the provision(s) covered by table item 2.	1 October 2006
33. Schedule 1, item 234	At the same time as the provision(s) covered by table item 3.	1 July 2007

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## Schedule 1—Amendments

### Part 1—Amendments

#### *Aboriginal and Torres Strait Islander Act 2005*

##### **1 After paragraph 193X(1)(c)**

Insert:

- (ca) when requested to do so by the Minister—to evaluate or audit the activities or operations of a Land Council (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); and
- (cb) when requested to do so by the Minister—to evaluate or audit the activities or operations of any body corporate or other person that has received an amount:
  - (i) under a determination under subsection 35(2), (3) or (6) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
  - (ii) under subsection 35(3) of that Act in accordance with an agreement mentioned in that subsection; or
  - (iii) under subsection 35(4) of that Act that the Land Council concerned has advised, under subsection 35(4A) of that Act, is an accountable amount; or
  - (iv) under subsection 35(4B) of that Act; or
  - (v) under subsection 35(11) of that Act in relation to an amount covered by subparagraph (i), (ii), (iii) or (iv) of this paragraph; or
  - (vi) under subsection 67B(6) of that Act that the Land Council concerned has advised, under subsection 67B(7) of that Act, is an accountable amount;  
but only to the extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; and
- (cc) when requested to do so by the Minister—to evaluate or audit the activities of any individual or organisation that has received an amount under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, but only to the

extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; and

## ***Aboriginal Land Rights (Northern Territory) Act 1976***

### **1A Subsection 3(1)**

Insert:

*approved entity* means a Commonwealth entity or an NT entity.

### **2 Subsection 3(1)**

Insert:

*Commonwealth Electoral Roll* means the Rolls kept under the *Commonwealth Electoral Act 1918*.

### **2A Subsection 3(1)**

Insert:

*Commonwealth entity* means a person approved by the Minister under section 3AAA.

### **3 Subsection 3(1)**

Insert:

*Electoral Commissioner* has the same meaning as in the *Commonwealth Electoral Act 1918*.

### **4 Subsection 3(1)**

Insert:

*excludable matter* means any of the following:

- (a) a matter relating to a member of the staff of a Land Council or to any other person assisting a Land Council in the performance of its functions or in the exercise of its powers;
- (b) a matter involving personal hardship suffered by a person;
- (c) a trade secret or other information having a commercial value the disclosure of which would, or could reasonably be expected to, affect a person adversely in respect of the person's lawful business, professional, commercial or financial affairs;

- (d) any matter the divulging or communicating of which is prohibited by section 23E;
- (e) information the disclosure of which would found an action for breach of confidence;
- (f) information of such a nature that it would be privileged from being disclosed in legal proceedings on the ground of legal professional privilege;
- (g) information the disclosure of which would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law;
- (h) a matter affecting the security of a Land Council, its members, its staff or its property;
- (i) information that is considered sacred or otherwise significant by a particular group of Aboriginals, the disclosure of which would be inconsistent with the views or sensitivities of those Aboriginals.

**4A Subsection 3(1) (definition of *exploration retention lease*)**

Repeat the definition.

**4B Subsection 3(1)**

Insert:

*exploration retention licence* means an exploration retention licence granted under a law of the Northern Territory relating to mining for minerals and includes a retention licence granted under the *Petroleum Act* of the Northern Territory as amended from time to time.

**4BA Subsection 3(1) (subparagraph (a)(ii) of the definition of *intending miner*)**

Omit “exploration retention lease or exploration retention licence, or has made an application for the grant of such a lease or licence”, substitute “exploration retention licence, or has made an application for the grant of an exploration retention licence”.

**4C Subsection 3(1) (definition of *mining interest*)**

Omit “exploration retention lease”, substitute “exploration retention licence”.

## 8 Subsection 3(1)

Insert:

*NT entity* means a person approved by the Chief Minister of the Northern Territory under subsection 3AA(1).

## 9 Subsection 3(1) (definition of *petroleum*)

Repeal the definition, substitute:

*petroleum* has the meaning given by subsection 5(1) of the *Petroleum Act* of the Northern Territory.

## 10 Subsection 3(1)

Insert:

*qualifying area* means an area that:

- (a) is wholly included in the area of a Land Council; or
- (b) is partly included in the area of one Land Council and partly included in the area of one or more other Land Councils.

## 11 Subsection 3(1)

Insert:

*township*, in relation to a Land Trust, has the meaning given by section 3AB.

## 13 After section 3

Insert:

### 3AAA Approval of Commonwealth entities

The Minister may, by writing, approve a person for the purposes of the definition of *Commonwealth entity* in subsection 3(1).

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that *person* includes a body corporate or body politic.

### 3AA Approval of NT entities

- (1) The Chief Minister of the Northern Territory may, by writing, approve a person for the purposes of the definition of *NT entity* in subsection 3(1).

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that **person** includes a body corporate or body politic.

*Executive authority*

- (2) If an NT entity is the Northern Territory, a Minister of the Northern Territory, on behalf of that entity, may:
  - (a) enter into a lease under section 19A; and
  - (b) exercise all the powers of a lessee (including granting a sublease).
- (3) The power of the Legislative Assembly of the Northern Territory under the *Northern Territory (Self-Government) Act 1978* in relation to the making of laws extends to the making of laws providing for the establishment and operation of an authority or body for the purpose of the authority or body being approved under subsection (1) of this section.

### **3AB Townships**

- (1) For the purposes of this Act, **township**, in relation to a Land Trust (the **applicable Land Trust**), means either of the following 2 types of areas of Aboriginal land vested in that Land Trust.

*Areas applicable to all Land Trusts*

- (2) The first type is an area of land that is of a kind prescribed by the regulations, for the purposes of this subsection, in relation to all Land Trusts.

*Areas applicable to that Land Trust*

- (3) The second type is an area of land that is prescribed by the regulations, for the purposes of this subsection, in relation to the applicable Land Trust only.

### **14 Subsection 4(1)**

After “permission, and”, insert “, subject to subsections 10(1) and (2),”.

### **15 After subsection 4(1AA)**

Insert:

(1AB) To avoid doubt, the Minister may establish a Land Trust under subsection (1) for the purpose of it holding land that is to be transferred to it under subsection 19(4).

(1AC) If:

- (a) the Minister establishes a Land Trust (the *new Land Trust*) under subsection (1) for the purpose of it holding land that is to be transferred to it under subsection 19(4) by another Land Trust; and
  - (b) the other Land Trust advises the Minister in writing that it is no longer going to transfer the land;
- the Minister may, by written notice, abolish the new Land Trust.

## 16 After subsection 4(2)

Insert:

### *Anindilyakwa Land Trust*

(2A) An Aboriginal Land Trust with the name “Anindilyakwa Land Trust” is established by this subsection. The boundaries of the land to be held by the Land Trust are set out in Schedule 6.

Note: Section 12AAB deals with the grant of land to the Land Trust.

## 17 Before subsection 4(3)

Insert:

### *Varying Land Trust boundaries*

(2B) The Minister may, by notice published in the *Gazette*, vary the boundaries of the land to be held by a Land Trust:

- (a) because of a determination under subsection 10(2AA) or subparagraph 11(1)(c)(ii), (1AD)(d)(ii) or (1AE)(c)(ii); or
- (b) because of a proposed transfer under subsection 19(4).

The variation takes effect on the day, or on the occurrence of an event, specified in the notice.

Note 1: The following heading to subsection 4(3) is inserted “*Legal status of Land Trust*”.

Note 2: The following heading to subsection 4(4) is inserted “*Common seal of Land Trust*”.

## 18 Subsections 4(5) and (5A)

Repeal the subsections, substitute:

---

- (5) The common seal of a Land Trust is to be affixed to a document only with a written authority signed by:
- (a) if the Trust consists of 4 or more members—at least 3 of those members; or
  - (b) if the Trust consists of 3 members—at least 2 of those members.

Note: Section 7 deals with the membership of a Land Trust.

## **19 At the end of section 4**

Add:

*Notices are not legislative instruments*

- (7) A notice under subsection (1), (1AC) or (2B) is not a legislative instrument.

## **20 Subsection 7(7)**

Omit “3”, substitute “5”.

## **21 Paragraph 10(1)(a)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) a Land Trust has been established in respect of land constituting, or included within, an area of land described in Schedule 1; or
  - (ii) the Minister has, under subsection (2AA), determined that a specified existing Land Trust should hold a specified area of land described in Schedule 1; and

## **22 Paragraph 10(2)(a)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) a Land Trust has been established in respect of land constituting, or included within, an area of land described in Schedule 1; or
  - (ii) the Minister has, under subsection (2AA), determined that a specified existing Land Trust should hold a specified area of land described in Schedule 1; and

## **23 After subsection 10(2)**

Insert:

- (2AA) The Minister may, by a determination in writing, specify an existing Land Trust, and an area of land described in Schedule 1, for the purposes of subparagraph (1)(a)(ii) or (2)(a)(ii). The determination is not a legislative instrument.

## 24 Paragraph 11(1)(b)

Repeal the paragraph, substitute:

- (b) the Minister is satisfied that the land (the *divisible land*), or a part (also the *divisible land*) of the land, should be granted to one or more new or existing Land Trusts so that each Land Trust holds the land granted to it for the benefit of Aboriginals who are the relevant Aboriginals in relation to the land granted to it;

## 25 Paragraphs 11(1)(c), (d) and (e)

Repeal the paragraphs, substitute:

- (c) do either or both of the following:
- (i) establish the one or more Land Trusts under section 4;
  - (ii) make a determination in writing specifying the one or more existing Land Trusts;
- that are to hold the divisible land or parts of the divisible land for the benefit of Aboriginals who are the relevant Aboriginals in relation to the divisible land or the parts of the divisible land; and
- (d) if the divisible land or a part of the divisible land proposed to be held by a Land Trust referred to in paragraph (c) is not, and does not include, alienated Crown land—recommend to the Governor-General that a grant of an estate in fee simple in that land or part be made to that Land Trust; and
- (e) if the divisible land or a part of the divisible land proposed to be held by a Land Trust referred to in paragraph (c) is, or includes, alienated Crown land:
- (i) ensure that the estates and interests in that land or part of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
  - (ii) after any acquisition referred to in subparagraph (i) has been effected, recommend to the Governor-General that



a grant of an estate in fee simple in that land or part be made to that Land Trust.

**26 Subsection 11(1AA)**

Omit “, being further action involving the establishment of a Land Trust that is, or Land Trusts each of which is, different from the Land Trust or from any of the Land Trusts established by the first-mentioned action”.

**27 Paragraph 11(1AD)(c)**

After “all the land”, insert “(the *recommended land*)”.

**28 Paragraph 11(1AD)(c)**

Omit “(in this subsection referred to as *relevant recommendations*)”.

**29 Paragraphs 11(1AD)(d), (e) and (f)**

Repeal the paragraphs, substitute:

- (d) do either or both of the following:
  - (i) establish one or more Land Trusts under section 4;
  - (ii) make a determination in writing specifying one or more existing Land Trusts;  
that are to hold the recommended land or a part or parts of the recommended land for the benefit of Aboriginals who are the relevant Aboriginals in relation to the recommended land or the part or parts of the recommended land; and
- (e) if the recommended land or a part of the recommended land proposed to be held by a Land Trust referred to in paragraph (d) is not, and does not include, alienated Crown land—recommend to the Governor-General that a grant of an estate in fee simple in that land or part be made to that Land Trust; and
- (f) if the recommended land or a part of the recommended land proposed to be held by a Land Trust referred to in paragraph (d) is, or includes, alienated Crown land:
  - (i) ensure that the estates and interests in that land or part of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
  - (ii) after any acquisition referred to in subparagraph (i) has been effected, recommend to the Governor-General that

a grant of an estate in fee simple in that land or part be made to that Land Trust.

### **30 Paragraphs 11(1AE)(c), (d) and (e)**

Repeal the paragraphs, substitute:

(c) do either of the following:

- (i) establish a single Land Trust under section 4;
- (ii) make a determination in writing specifying a single existing Land Trust;

that is to hold those areas or those parts of those areas for the benefit of Aboriginals who are the relevant Aboriginals in relation to those areas or parts; and

(d) if those areas or those parts of those areas are not, and do not include, alienated Crown land—recommend to the Governor-General that a grant of an estate in fee simple in those areas or parts be made to the Land Trust; and

(e) if those areas or those parts of those areas are, or include, alienated Crown land:

- (i) ensure that the estates and interests in those areas or parts of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
- (ii) after any acquisition referred to in subparagraph (i) has been effected, recommend to the Governor-General that a grant of an estate in fee simple in those areas or parts be made to that Land Trust.

### **31 Subsection 11(5)**

Omit “paragraph (1)(e)”, substitute “paragraph (1)(d) or (e)”.

### **32 Subsection 11(5)**

Omit “(1AD)(f) or (1AE)(e)”, substitute “(1AD)(e) or (f) or (1AE)(d) or (e)”.

### **33 At the end of section 11**

Add:

- (6) A determination under subparagraph (1)(c)(ii), (1AD)(d)(ii) or (1AE)(c)(ii) is not a legislative instrument.

### **34 After section 12AAA**

---

Insert:

**12AAB Grant of land to Anindilyakwa Land Trust etc.**

*Immediate grant of land to Anindilyakwa Land Trust*

- (1) The Governor-General may:
- (a) execute a deed of grant to the Anindilyakwa Land Trust of an estate in fee simple in so much of the land in the area of the Anindilyakwa Land Council as was included in any Arnhem Land type 1 deed (regardless of whether the deed also included other land); and
  - (b) deliver it to the Anindilyakwa Land Trust.

The deed of grant is not a legislative instrument.

Note: See subsection (9) for the definition of *Arnhem Land type 1 deed*.

*Delayed grant of land to Anindilyakwa Land Trust*

- (2) The Governor-General may:
- (a) execute a deed of grant to the Anindilyakwa Land Trust of an estate in fee simple in so much of the land in the area of the Anindilyakwa Land Council as was included in any Arnhem Land type 2 deed; and
  - (b) deliver it to the Anindilyakwa Land Council on the condition that the Council hold it in escrow and deliver it to the Anindilyakwa Land Trust when all of the estates and interests in that land held by a person (other than the Crown) have come to an end, whether by surrender to the Crown or otherwise.

The deed of grant is not a legislative instrument.

Note: See subsection (9) for the definition of *Arnhem Land type 2 deed*.

*Application of other provisions of this Act*

- (3) The provisions of this Act apply to a grant under subsection (1) or (2) as if it were a grant under subsection 12(1).

Note: One of the consequences of this subsection is that subsection 12(4) will apply to determine when a deed of grant executed under subsection (1) or (2) of this section takes effect. Another consequence is that the Anindilyakwa Land Trust will be able to apply under subsection 12(5) to have such a deed registered.

*Land no longer held by Arnhem Land Aboriginal Land Trust*

- (4) The following table sets out the effect on:
- (a) an Arnhem Land type 1 deed or an Arnhem Land type 2 deed that included land in the area of the Anindilyakwa Land Council (regardless of whether the deed also included other land); and
  - (b) the boundaries of the land that is held by the Arnhem Land Aboriginal Land Trust.

---

<b>Deeds of grant</b>	
<b>For this deed:</b>	<b>the result is:</b>
1 An Arnhem Land type 1 deed that included part of the land in the area of the Anindilyakwa Land Council and no other land	The deed is taken to be revoked. At the time the deed of grant executed under subsection (1) takes effect: <ul style="list-style-type: none"><li>(a) the revocation takes effect; and</li><li>(b) the boundaries are taken to have been varied to no longer relate to that part of the land in the area of the Anindilyakwa Land Council.</li></ul>
2 An Arnhem Land type 1 deed that included part of the land in the area of the Anindilyakwa Land Council and some other land	The deed ceases to include the part of the land in the area of the Anindilyakwa Land Council. At the time the deed of grant executed under subsection (1) takes effect: <ul style="list-style-type: none"><li>(a) the cessation takes effect; and</li><li>(b) the boundaries are taken to have been varied to no longer relate to that part of the land in the area of the Anindilyakwa Land Council.</li></ul>
3 An Arnhem Land type 2 deed that included part of the land in the area of the Anindilyakwa Land Council and no other land	The deed is taken to be revoked. At the time the deed of grant executed under subsection (2) is delivered to the Anindilyakwa Land Council: <ul style="list-style-type: none"><li>(a) the revocation takes effect; and</li><li>(b) the boundaries are taken to have been varied to no longer relate to that part of the land in the area of the Anindilyakwa Land Council.</li></ul>

---

- (5) If the Registrar-General or other appropriate officer under the law of the Northern Territory relating to the transfer of land is required
-

to register the deed of grant executed under subsection (1), he or she must also take such measures as are necessary to take account of the effect on the deeds of grant mentioned in item 1 or 2 of the table in subsection (4).

Note: Subsection 12(5) deals with registration of deeds of grant.

*Existing rights, titles or other interests*

- (6) The following table sets out the effect on a right, title or other interest in land in the area of the Anindilyakwa Land Council to which an Arnhem Land type 1 deed or an Arnhem Land type 2 deed related.

<b>Existing rights, titles or other interests</b>	
<b>For this deed:</b>	<b>the result is:</b>
1 An Arnhem Land type 1 deed	The right, title or other interest is, from the day the deed of grant executed under subsection (1) takes effect, preserved as a right, title or interest in that land in that deed.
2 An Arnhem Land type 2 deed	(a) if the right, title or other interest was acquired by the Arnhem Land Aboriginal Land Trust as mentioned in paragraph 5(1)(c)—the right, title or other interest is, from the day the deed of grant executed under subsection (2) of this section is delivered to the Anindilyakwa Land Council, taken to have been acquired and to be held by the Anindilyakwa Land Trust; or  (b) otherwise—the right, title or other interest is, from the day the deed of grant executed under subsection (2) of this section is delivered to the Anindilyakwa Land Council, preserved as a right, title or interest in that land in that deed.

**Schedule 1** Amendments  
**Part 1** Amendments

---

*Documents*

- (7) The following table sets out the effect on a reference in a document to an Arnhem Land type 1 deed or an Arnhem Land type 2 deed, in so far as the reference relates to land in the area of the Anindilyakwa Land Council.

---

<b>Documents</b>	
<b>For this deed:</b>	<b>the result is:</b>
1 An Arnhem Land type 1 deed	The reference is taken, from the day the deed of grant executed under subsection (1) takes effect, to be a reference to that deed.
2 An Arnhem Land type 2 deed	The reference is taken, from the day the deed of grant executed under subsection (2) is delivered to the Anindilyakwa Land Council, to be a reference to that deed.

---

*Agreements*

- (8) The following table sets out the effect on an agreement entered into by the Arnhem Land Aboriginal Land Trust in respect of land:
- (a) in the area of the Anindilyakwa Land Council; and
  - (b) included in an Arnhem Land type 1 deed or an Arnhem Land type 2 deed.

---

<b>Agreements</b>	
<b>For this deed:</b>	<b>the result is:</b>
1 An Arnhem Land type 1 deed	The agreement is taken to have the same force and effect, with effect from the day the deed of grant executed under subsection (1) takes effect, as the agreement would have had if it had been entered into by the Anindilyakwa Land Trust.

---

---

---

**Agreements**

---

<b>For this deed:</b>	<b>the result is:</b>
2 An Arnhem Land type 2 deed	The agreement is taken to have the same force and effect, with effect from the day the deed of grant executed under subsection (2) is delivered to the Anindilyakwa Land Council, as the agreement would have had if it had been entered into by the Anindilyakwa Land Trust.

---

*Definitions*

(9) In this section:

***Arnhem Land Aboriginal Land Trust*** means the Land Trust of that name established by the Minister by notice published in the *Gazette* under subsection 4(1).

***Arnhem Land type 1 deed*** means:

- (a) a deed of grant executed under paragraph 12(1)(a) to the Arnhem Land Aboriginal Land Trust; or
- (b) a deed of grant executed under paragraph 12(1)(b) to the Arnhem Land Aboriginal Land Trust that took effect before the commencement of this section.

Note: See subsection 12(4) for when a deed of grant under section 12 takes effect.

***Arnhem Land type 2 deed*** means a deed of grant executed under paragraph 12(1)(b) to the Arnhem Land Aboriginal Land Trust that has not taken effect before the commencement of this section.

**35 Subsection 14(3)**

After “Authority”, insert “, as the case may be,”.

**36 After subsection 14(3)**

Insert:

- (3A) Nothing in this section prevents a Land Trust granting a lease of land to an approved entity under section 19A that includes land referred to in subsection (1) of this section.

(3B) If land (the *applicable land*):

- (a) is of a kind referred to in subsection (1); and
- (b) is part of land that is leased to an approved entity under section 19A;

nothing in this section prevents the approved entity granting a sublease of the applicable land to the Commonwealth, the Northern Territory or an Authority, as the case may be.

(3C) If such a sublease is granted, the applicable land ceases to be land to which this section applies.

### **37 Subsection 15(1)**

Omit “Where”, substitute “Subject to subsection (1A), if”.

Note: The heading to section 15 is altered by omitting “to Land Council”.

### **38 After subsection 15(1)**

Insert:

(1A) If the land referred to in subsection (1) is part of land that is leased to an approved entity under section 19A, the Crown must pay to the approved entity the amounts referred to in subsection (1) of this section (instead of paying the amounts to the Land Council concerned).

### **39 Section 17**

After “Land Council”, insert “or an approved entity”.

Note: The heading to section 17 is altered by adding at the end “or approved entity”.

### **40 Subsection 19(1)**

Before “20”, insert “19A or”.

### **41 At the end of subsection 19(4)**

Add:

Note: See also section 20A (which deals with the application of the law of the Northern Territory relating to the transfer of land).

### **42 After subsection 19(4)**

Insert:



(4AA) Any right, title or other interest in land transferred under subsection (4) that existed immediately before the transfer is preserved as a right, title or interest in that land after the transfer.

(4AB) Any agreement in respect of land transferred under subsection (4) that was entered into by the transferor Land Trust and that is in force immediately before the transfer is taken to have the same force and effect, after the transfer, as the agreement would have had if it had been entered into by the transferee Land Trust.

#### **43 Subsection 19(7)**

Repeal the subsection, substitute:

(7) The consent of the Minister is not required for the grant under subsection (2), (3) or (4A) of an estate or interest the term of which does not exceed 40 years.

#### **44 After subsection 19(8)**

Insert:

(8A) A Land Council may give a consent under subsection (8) at the time it gives a direction under subsection (2), (3) or (4A) or at any later time.

(8B) The Minister may give a consent under subsection (8) at the time he or she gives a consent under subsection (2), (3) or (4A) or at any later time.

(8C) A consent of the Minister or a Land Council under subsection (8) relating to a transfer or grant may:

(a) be general; or

(b) be expressed to be limited to a specified person or a person included in a specified class.

#### **45 At the end of section 19**

Add:

(13) If a Land Trust grants an estate or interest in Aboriginal land under this section, then, at the direction, in writing, of the relevant Land Council, the Land Trust may, in writing, authorise a specified person, or any person included in a specified class of persons, to

enter or remain on the land for a specified purpose that is related to that estate or interest.

Note: Section 70 will not apply to a person who enters or remains on the land in accordance with such an authorisation: see subsection 70(2B).

- (14) A direction or an authorisation under subsection (13) is not a legislative instrument.

## **46 After section 19**

Insert:

### **19A Land Trust may grant headlease over township**

#### *Grant of lease*

- (1) A Land Trust may grant a lease of a township to an approved entity if:
- (a) the Minister consents, in writing, to the grant of the lease; and
  - (b) the Land Council for the area in which the land is situated directs, in writing, the Land Trust to grant the lease.

A consent or direction under this subsection is not a legislative instrument.

#### *Land Council direction*

- (2) A Land Council must not give a direction under subsection (1) for the grant of a lease unless it is satisfied that:
- (a) the traditional Aboriginal owners (if any) of the land understand the nature and purpose of the proposed lease and, as a group, consent to it; and
  - (b) any Aboriginal community or group that may be affected by the proposed lease has been consulted and has had adequate opportunity to express its view to the Land Council; and
  - (c) the terms and conditions of the proposed lease (except those relating to matters covered by this section) are reasonable.
- (3) If a Land Council, in giving a direction for a grant of a lease, fails to comply with subsection (2), that failure does not invalidate that grant unless the approved entity to whom the grant was made procured the direction of the Land Council by fraud.

*Term of lease*

- (4) Subject to subsection (5), the term of a lease granted under this section is 99 years.
- (5) If, before the end of the 69th year of the term of a lease (the **original lease**) granted under this section, a Land Trust grants another lease under this section to the same approved entity covering the area of land concerned (whether or not the other lease also covers other land), the original lease ends at the time the other lease takes effect.
- (6) A lease granted under this section must not make provision for the lessee to make a payment to a person other than the lessor.

*Transfer of lease*

- (8) A lease granted under this section must not be transferred, except to another approved entity with the written approval of the Minister. An approval is not a legislative instrument.

*Lease not to be used as security*

- (9) A lease granted under this section must not be used as security for a borrowing.

*Preserving any existing right, title or other interest*

- (10) Any right, title or other interest in land the subject of a lease granted under this section that existed immediately before the time the lease takes effect is preserved as a right, title or interest in that land after that time.
- (11) If that right, title or other interest was granted by the Land Trust, then, at the time the lease granted under this section takes effect, that right, title or other interest has effect as if it were granted by the approved entity on the same terms and conditions as existed immediately before that time.
- (12) If:
  - (a) subsection (11) applies in relation to a right, title or other interest; and
  - (b) the lease is transferred in accordance with this section; and

(c) the right, title or other interest existed immediately before the time the transfer takes effect;  
then, at that time, the right, title or other interest has effect as if it were granted by the transferee on the same terms and conditions as existed immediately before that time.

*Subleases*

- (13) This section does not prevent a sublease of a lease granted under this section.
- (14) A lease granted under this section must not contain any provision requiring the consent of any person to the grant of a sublease of the lease.
- (15) A lease granted under this section must not contain any provision relating to the payment of rent, or the non-payment of rent, in relation to a sublease of the lease.

**19C Modification of certain NT laws for a township lease held by a Commonwealth entity or transferred from a Commonwealth entity to an NT entity**

- (1) This section applies to:
  - (a) the grant of a lease to a Commonwealth entity under section 19A; or
  - (b) the transfer of a lease to a Commonwealth entity in accordance with that section; or
  - (c) the transfer of a lease from a Commonwealth entity to an NT entity in accordance with that section.

*Taxes*

- (2) No stamp duty or similar tax is payable under a law of the Northern Territory in respect of the grant or transfer.

*Registration*

- (3) On the application of the Commonwealth entity or the NT entity, the Registrar-General or other appropriate officer under the law of the Northern Territory relating to the transfer of land must register the instrument of grant or transfer as if it were duly executed under that law.

**19D Modification of NT subdivision law for grant of a township lease to a Commonwealth entity**

The procedures for the subdivision of land under the law of the Northern Territory relating to the transfer of land do not apply in respect of the grant of a lease to a Commonwealth entity under section 19A.

**19E Modification of certain NT laws for a township lease held by a Commonwealth entity**

- (1) This section applies in relation to a lease:
  - (a) granted to a Commonwealth entity under section 19A; or
  - (b) transferred to a Commonwealth entity in accordance with that section.
- (2) The regulations may make modifications of any law of the Northern Territory relating to:
  - (a) planning; or
  - (b) infrastructure; or
  - (c) the subdivision or transfer of land; or
  - (d) other prescribed matters;to the extent that the law applies to land the subject of the lease.
- (3) In subsection (2):

*modifications* includes additions, omissions and substitutions.
- (4) The regulations cease to have effect if the lease is transferred to an NT entity in accordance with section 19A.

**47 Section 20A**

Before “The law”, insert “(1)”.

**48 Section 20A**

Omit “The law”, substitute “Subject to sections 19C to 19E and this section, the law”.

**49 At the end of section 20A**

Add:

- (2) No stamp duty or similar tax is payable under a law of the Northern Territory in respect of a transfer under subsection 19(4).
- (3) The procedures for the subdivision of land under the law of the Northern Territory relating to the transfer of land do not apply in respect of a transfer of an estate or interest in any part of land under subsection 19(4).
- (4) On the application of a Land Trust that has had an estate or interest in any part of land transferred to it under subsection 19(4), the Registrar-General or other appropriate officer under the law of the Northern Territory relating to the transfer of land must register the instrument of transfer as if it were duly executed under that law.

**50 At the end of subsection 21(1)**

Add:

Note: New Land Councils may also be established: see sections 21A to 21D.

**51 Subsections 21(3), (4), (5) and (6)**

Repeal the subsections.

**52 After section 21**

Insert:

**21A Aboriginal group or body may seek establishment of new Land Council**

- (1) The following may apply to the Minister, in writing, for the establishment of a new Land Council for a qualifying area:
  - (a) one or more adult Aboriginals living in the qualifying area;
  - (b) an Aboriginal Council, the area of which is in the qualifying area;
  - (c) an Incorporated Aboriginal Association, the majority of whose members live in the qualifying area;
  - (d) an association of Aboriginals, or a company whose shareholders are all Aboriginals, incorporated under a law of the Northern Territory and the majority of whose members or shareholders live in the qualifying area;
  - (e) any other body prescribed by the regulations, the majority of whose members live in the qualifying area.

- (2) An application must:
- (a) set out the boundaries of the qualifying area; and
  - (b) specify a name for the proposed new Land Council; and
  - (c) include an estimate of the number of Aboriginals living in the qualifying area and an explanation of how the estimate was arrived at; and
  - (d) specify the proposed management structure for the proposed new Land Council; and
  - (e) specify the proposed arrangements for consulting and representing Aboriginals living in the qualifying area on issues affecting that area; and
  - (f) include details of any consultation that has occurred with Aboriginals living in the qualifying area on the proposed establishment of the new Land Council; and
  - (g) include any other information prescribed by the regulations.

**21B Minister's assessment of application for establishment of new Land Council**

- (1) If the Minister receives an application under section 21A, the Minister must, by notice in writing:
- (a) state that he or she supports the establishment of the new Land Council and that he or she will request the Australian Electoral Commission to hold a vote on the matter; or
  - (b) refuse the application.
- (2) The Minister must not give a notice stating that he or she supports the establishment of the new Land Council unless he or she is satisfied that:
- (a) the qualifying area is an appropriate area for the establishment of a new Land Council; and
  - (b) the proposed new Land Council will be able to satisfactorily perform the functions of a Land Council.
- (3) The Minister must give the applicant written notice of the Minister's decision. If the Minister refuses the application, the notice must also include reasons for the refusal.
- (4) A notice under subsection (1) is not a legislative instrument.

**21C Establishment of new Land Council if a 55% positive vote**

- (1) If the Minister gives a notice under section 21B stating that he or she supports the establishment of the new Land Council, he or she must request the Australian Electoral Commission to hold a vote on the proposed establishment of the new Land Council.
- (2) The Australian Electoral Commission must hold the vote as soon as practicable after being requested to do so.

*Voting*

- (3) A person is entitled to vote if:
  - (a) the person is an adult Aboriginal; and
  - (b) either:
    - (i) the person's name is on the Commonwealth Electoral Roll and the person's place of living as shown on the Roll is in the qualifying area; or
    - (ii) the person is entitled to vote under rules made under subsection (4).

Note: See also section 21D (which contains further provisions about the Commonwealth Electoral Roll).

- (4) The Minister may, by legislative instrument, make rules for and in relation to the holding of the vote. In particular, the rules may:
  - (a) deal with the timing of the vote; and
  - (b) for the purposes of subparagraph (3)(b)(ii)—deal with those persons entitled to vote; and
  - (c) confer powers on the Electoral Commissioner or a member of the staff of the Australian Electoral Commission.

*Minister may establish new Land Council if a 55% positive vote*

- (5) The Minister may, by notice in writing, establish the new Land Council for the qualifying area if at least 55% of the formal votes cast by persons entitled to vote on the proposal are in favour of it.
- (6) For the purposes of subsection (5), a vote is formal if and only if:
  - (a) a person authorised under subsection (7) is satisfied that it is on an authentic ballot paper; and
  - (b) it indicates the voter's preference for either being in favour or against the proposal; and



- (c) it does not have upon it any writing or another mark by which, in the opinion of a person authorised under subsection (7), the voter can be identified (not including writing or another mark placed on the ballot paper, whether or not in contravention of any law, by a person involved in conducting the vote).
- (7) The Electoral Commissioner may, by writing, authorise a member of the staff of the Australian Electoral Commission for the purpose of subsection (6).

*Name and boundaries of new Land Council*

- (8) The notice under subsection (5) must:
- (a) specify the name of the new Land Council (which must be the name specified in the application under section 21A); and
  - (b) set out the boundaries of the area for which the new Land Council is established.

*Redrawing of boundaries of other Land Council areas*

- (9) On the establishment of the new Land Council, the area specified in the notice under subsection (5) ceases to be part of the area of the Land Council, or of the areas of the Land Councils, in which it was included immediately before that establishment.

*Informing Aboriginals about existence of new Land Council*

- (10) On the establishment of the new Land Council, the Minister must take whatever steps he or she considers necessary and practicable to inform the adult Aboriginals living in the area of the Council of the existence of the Council.

*Publication*

- (11) The Minister must publish the notice under subsection (5) in the *Gazette*.

*Notice not a legislative instrument*

- (12) A notice under subsection (5) is not a legislative instrument.

## **21D Rules about Commonwealth Electoral Roll**

- (1) For the purposes of section 21C, a person's name is taken to be on the Commonwealth Electoral Roll if the name appearing on the Roll is, in the opinion of a person authorised under subsection (2) of this section, sufficient to identify the person.
- (2) The Electoral Commissioner may, by writing, authorise a member of the staff of the Australian Electoral Commission for the purpose of subsection (1).

## **53 Subsection 22(1) (note)**

Omit "Note", substitute "Note 1".

## **54 At the end of subsection 22(1)**

Add:

Note 2: The activities or operations of a Land Council may be evaluated or audited: see paragraph 193X(1)(ca) of the *Aboriginal and Torres Strait Islander Act 2005*.

## **55 Subsection 22A(2)**

Omit "of a Land Council (not the members of the Land Council) is the only director", substitute "and Deputy Chair of a Land Council are the only directors".

## **56 After section 23**

Insert:

### **23AA How functions of a Land Council are to be performed**

#### *Priorities*

- (1) A Land Council must from time to time determine the priorities it will give to performing its functions under this Part.
- (2) A Land Council may allocate resources in the way it thinks fit so as to be able to perform its functions efficiently.
- (3) A Land Council must give priority to the protection of the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Council.

*Functions to be performed in a timely manner*

- (4) A Land Council must use its best efforts to perform its functions in a timely manner, particularly in respect of matters affected by:
- (a) time limits under this Act; or
  - (b) time limits under another law of the Commonwealth or a law of the Northern Territory that are relevant to the performance of its functions.

*Maintenance of organisational structures and processes*

- (5) A Land Council must perform its functions in a manner that:
- (a) maintains organisational structures and administrative processes that promote the satisfactory representation by the Council of, and promote effective consultation with, the traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Council; and
  - (b) ensures that the structures and processes operate in a fair manner.

**57 Subsection 23E(2)**

Omit “a fine of \$2,000 or imprisonment for 12 months, or both”, substitute “a fine of not more than 60 penalty units or imprisonment for not more than 12 months, or both”.

**58 Subsection 23E(4) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units or imprisonment for 6 months.

**59 After subsection 27(1)**

Insert:

- (1A) A Land Council may, on the request of an Incorporated Aboriginal Association that has received an amount of money from the Council under this Act, provide administrative or other assistance to the Association.

**60 Subsection 27(3)**

Omit “\$100,000”, substitute “\$1,000,000”.

## 61 Subsections 28(1), (2) and (3)

Repeal the subsections, substitute:

*Delegation to Council Chair or Council member or staff member*

- (1) A Land Council may, in writing under its common seal, delegate to the following:
- (a) the Chair or another member of the Council;
  - (b) a member of the staff of the Council;
- any of the Council's functions or powers under this Act other than the following:
- (c) the giving or withholding of consent in relation to the acquisition or grant of an estate or interest in Aboriginal land under an agreement or agreements:
    - (i) that will have effect for a period that exceeds, or for periods that together exceed, 2 years; or
    - (ii) in respect of which the approval of the Minister is required by subsection 27(3);
  - (d) the making of determinations under section 35;
  - (e) the giving or refusing of a consent under subsection 42(1);
  - (f) the giving of a consent under section 48C;
  - (g) any function or power prescribed by the regulations.

*Delegation to Council committee*

- (2) A Land Council may, in writing under its common seal, delegate to a committee appointed under section 29A any of the Council's functions or powers under this Act other than the following:
- (a) the making of determinations under section 35;
  - (b) any function or power prescribed by the regulations.

*Delegation to a body corporate*

- (3) A Land Council may, in writing under its common seal, delegate to a body corporate incorporated under the *Aboriginal Councils and Associations Act 1976*, that has made an application in accordance with section 28A, the Council's functions or powers under the following provisions:
- (a) section 11A (about agreements concerning land under claim);

- (b) section 19 (about dealings with interests in land by Land Trusts);
- (ba) section 19A (about grant of township leases);
- (c) Part IV (about mining);
- (d) section 67B (about granting estates or interests while land is subject to a traditional land claim).

**62 Subsection 28(4)**

After “Council, before”, insert “performing a function or”.

**63 Paragraph 28(4)(a)**

After “by the”, insert “performance of the function or the”.

**64 Subsection 28(4)**

Omit “power is delegated to another person, the person to whom it is delegated may exercise the power”, substitute “function or power is delegated, the delegate may perform the function or exercise the power”.

**65 After section 28**

Insert:

**28A Delegation of a Land Council’s functions or powers to body corporate**

*Application*

- (1) A body corporate incorporated under the *Aboriginal Councils and Associations Act 1976* may, in writing, apply to a Land Council to have the Council delegate to the body some or all of the Council’s functions or powers that are delegable to the body if a majority of the members of the body are either:
  - (a) the traditional Aboriginal owners of land in the part of the area of the Council mentioned in paragraph (2)(b); or
  - (b) Aboriginals who live in that part.

Note: Section 28 sets out which of the Council’s functions or powers are delegable to the body.

- (2) An application must:

- (a) set out whether the body wants the Council to delegate to the body:
  - (i) all of the delegable functions or powers; or
  - (ii) specified delegable functions or powers; or
  - (iii) specified delegable functions or powers in relation to specified matters; and
- (b) set out the part of the area of the Council in respect of which the body is seeking to perform those functions or exercise those powers; and
- (c) contain any other information prescribed by the regulations.

*Decision*

- (3) The Council must make the delegation under section 28 or refuse to make the delegation.

*Refusal*

- (4) If the Council refuses to make the delegation:
  - (a) it must give the body written notice of the refusal including reasons for the refusal; and
  - (b) it must give the Minister a copy of the notice.

Note: The body may seek the Minister's agreement to the delegation: see section 28C.

*Deemed refusal*

- (5) If the Council has neither made nor refused to make the delegation within the period worked out in accordance with the regulations, or such longer period as is agreed by the Minister, the Council is taken, at the end of that period, to have refused to make the delegation.

Note: The body may seek the Minister's agreement to the delegation: see section 28C.

- (6) The Council must give the body written notice of any longer period agreed by the Minister.

## **28B Variation or revocation of a delegation to body corporate**

- (1) If a Land Council delegates some or all of its functions or powers under section 28 to a body corporate, the Council must not vary or revoke the delegation except as set out in this section.

### *Revocation at request of body*

- (2) The body may, in writing, request the Council to revoke the delegation. At the end of the period of 30 days beginning on the day the body made the request, the Council is taken to have revoked the delegation.

### *Variation to remove functions or powers—application by body*

- (3) The body may, in writing, request the Council to vary the delegation to:
- (a) remove specified functions or powers; or
  - (b) remove specified functions or powers in relation to specified matters.

At the end of the period of 30 days beginning on the day the body made the request, the Council is taken to have so varied the delegation.

Note: For example, the body may seek to reduce the part of the area of the Council in respect of which the body wants to perform functions or exercise powers.

### *Variation to add functions or powers—application by body*

- (4) The body may, in writing, apply to the Council for a variation of the delegation to:
- (a) apply to all of the Council's functions or powers that are delegable to the body; or
  - (b) add specified delegable functions or powers; or
  - (c) add specified delegable functions or powers in relation to specified matters.

The Council must, in writing, vary or refuse to vary the delegation.

Note: For example, the body may seek to increase the part of the area of the Council in respect of which the body wants to perform functions or exercise powers.

- (5) If the Council refuses to vary the delegation:

- (a) it must give the body written notice of the refusal including reasons for the refusal; and
- (b) it must give the Minister a copy of the notice.

Note: The body may seek the Minister's agreement to the variation: see section 28C.

- (6) If the Council has neither varied nor refused to vary the delegation within the period worked out in accordance with the regulations, or such longer period as is agreed by the Minister, the Council is taken, at the end of that period, to have refused to vary the delegation.

Note: The body may seek the Minister's agreement to the variation: see section 28C.

- (7) The Council must give the body written notice of any longer period agreed by the Minister.

*Variation or revocation with Minister's approval*

- (8) The Council may, by notice in writing, seek the Minister's approval to vary or revoke the delegation.
- (9) The Minister may, by notice in writing, give the approval. The Council may, in writing, vary or revoke the delegation accordingly.

*Variation or revocation at Minister's direction*

- (10) The Minister may give the Council a notice in writing directing the Council to vary or revoke the delegation. At the time the Minister gives the Council the notice, the Council is taken to have varied or revoked the delegation in accordance with the direction.

*Notice not a legislative instrument*

- (11) A notice under subsection (9) or (10) is not a legislative instrument.

**28C Minister may agree to delegation or variation if Land Council refuses to do so**

- (1) If:
  - (a) a Land Council refuses, or is taken to have refused, under section 28A to make a delegation to a body corporate; or



- (b) a Land Council refuses under subsection 28B(4), or is taken to have refused under subsection 28B(6), to vary a delegation to a body corporate;  
the body may:
  - (c) send a copy of the application concerned to the Minister; and
  - (d) request the Minister, in writing, to decide it is appropriate for the Council to make the delegation, or the variation to the delegation, sought by the body (as the case requires).
- (2) The Minister must, by notice in writing, approve or refuse the request.
- (3) The Minister must not approve the request unless he or she is satisfied that the body will be able to satisfactorily perform the functions and exercise the powers sought by the body.

*Minister may seek Council's assistance*

- (4) In deciding whether to approve or refuse the request, the Minister may, by notice in writing, require the Council to:
  - (a) give specified information to the Minister; or
  - (b) make specified reports available to the Minister; or
  - (c) provide specified assistance to the Minister.The Council must comply with any such requirement.

*Consultation*

- (5) In deciding whether to approve or refuse the request, the Minister must consult the Council. The Minister may also consult such other persons or bodies as the Minister thinks appropriate.

*Approval*

- (6) If the Minister approves the request:
  - (a) the Minister must give the body and the Council written notice of the approval; and
  - (b) at the time the Minister gives the body notice of the approval, the Council is taken to have made the delegation under section 28, or the variation to the delegation, sought by the body (as the case requires).

*Refusal*

- (7) If the Minister refuses the request, the Minister must give the body and the Council written notice of the refusal. The Minister must also give the body written reasons for the refusal.

*Notice not a legislative instrument*

- (8) A notice under subsection (2) or (4) is not a legislative instrument.

**28D Land Council cannot perform functions or exercise powers delegated to body corporate**

- (1) While a delegation from a Land Council to a body corporate is in force under section 28, the Council cannot perform its functions or exercise its powers under this Act to the extent that they are covered by the delegation.
- (2) Subsection (1) applies despite paragraph 34AB(d) of the *Acts Interpretation Act 1901*.

**28E Land Council to provide assistance to body corporate**

- (1) If:
- (a) a delegation from a Land Council to a body corporate is in force under section 28; and
  - (b) a person requests the Land Council to perform a function or exercise a power covered by the delegation;
- the Land Council must, as soon as practicable, advise the body in writing of that request.
- (2) While a delegation from a Land Council to a body corporate is in force under section 28, the Council must provide the body with all reasonable facilities and assistance requested by the body in relation to the body's performance of the functions or the exercise of the powers covered by the delegation.

**28F Body corporate to give notice of its decisions**

If a body corporate makes a decision under a delegation from a Land Council under section 28, the body must:

- (a) record its decision in writing; and

- (b) give the Council a written notice setting out the decision; and
- (c) give a copy of the decision, upon request, to any person or body affected by the decision.

## **66 At the end of section 29**

Add:

### *Eligibility requirements*

- (3) A person is not eligible to be a member of a Land Council for the period set out in subsection (6) if a disqualifying event happens in relation to the person.
- (4) A person ceases to be a member of a Land Council if a disqualifying event happens in relation to the person.
- (5) For the purposes of subsections (3) and (4), a ***disqualifying event*** happens in relation to a person if the person:
  - (a) is convicted of an offence against a law of the Commonwealth, a State or a Territory (not involving dishonesty) and sentenced to a period of imprisonment of 12 months or more; or
  - (b) is convicted of an offence against a law of the Commonwealth, a State or a Territory involving dishonesty and sentenced to a period of imprisonment of 3 months or more; or
  - (c) is convicted of 2 or more offences against a law of the Commonwealth, a State or a Territory, is sentenced to a period or periods of imprisonment in respect of the offences and is required (or would have been required if the sentence or sentences had not been suspended) to serve a term of imprisonment of 12 months or more; or
  - (d) is convicted of 2 or more offences against a law of the Commonwealth, a State or a Territory involving dishonesty, is sentenced to a period or periods of imprisonment in respect of the offences and is required (or would have been required if the sentence or sentences had not been suspended) to serve a term of imprisonment of 3 months or more.

This subsection applies whether or not the person is also fined in respect of the offence or offences.

- (6) For the purposes of subsection (3), the period of ineligibility is for:

- (a) if the person serves a term of imprisonment—2 years beginning on the day the person is released from prison; or
- (b) if the person does not serve a term of imprisonment—2 years beginning on the day the person is convicted.

**67 After section 29**

Insert:

**29AA Register of interests of members of Land Council**

*Disclosure*

- (1) Each member of a Land Council must make to the Council written disclosures of the member's direct or indirect pecuniary interests in accordance with a determination of the Minister under this section.

*Keeping of register*

- (2) The Council must keep a register of the interests disclosed in accordance with the determination.

*Determination*

- (3) The Minister may, by legislative instrument, make a determination specifying:
  - (a) the kinds of interests to be disclosed; and
  - (b) the manner in which, and the times at which, disclosures are to be made; and
  - (c) the form in which the register is to be kept.

**68 Subsection 29A(1)**

After “may”, insert “, by notice in writing,”.

**69 At the end of subsection 29A(1)**

Add “or the exercise of any of its powers”.

**70 Subsection 29A(2)**

Repeal the subsection, substitute:

*Content of notice*

- (2) The notice must specify:
  - (a) the name of each committee member; and
  - (b) if the committee is appointed in relation to a particular area of the Land Council—that area.

*Number of committee members*

- (3) A committee must consist of at least 7 members or such other number as is prescribed by the regulations.

*Rules for conduct of meetings*

- (4) The Land Council must make written rules providing for and in relation to the convening of meetings, and the procedure for the conduct of meetings, of a committee appointed under this section. The rules are not a legislative instrument.
- (5) The Land Council must give a copy of the rules made under subsection (4) to the Minister.

*Minutes*

- (6) A committee must keep minutes of its meetings.

*Inspection*

- (7) The Land Council must allow:
  - (a) the traditional Aboriginal owners of Aboriginal land in the area of the Council; or
  - (b) any Aboriginal living in the area of the Council;to inspect, at any reasonable time without charge:
  - (c) rules made under subsection (4); or
  - (d) the minutes of committee meetings (other than any part of the minutes that relates to an excludable matter).

**71 Subsection 31(7)**

Repeal the subsection, substitute:

- (7) A Land Council must make written rules, not inconsistent with this Act, providing for and in relation to the convening of meetings,

and the procedure for the conduct of meetings, of the Council. The rules are not a legislative instrument.

- (7A) A Land Council must give a copy of the rules made under subsection (7) to the Minister for his or her approval.
- (7B) The Minister must, by notice in writing, approve or refuse to approve the rules. The notice is not a legislative instrument.
- (7C) The rules come into force once the Minister has approved them.
- (7D) A Land Council must allow the following persons to inspect, at any reasonable time without charge, rules made under subsection (7) and approved by the Minister:
  - (a) the traditional Aboriginal owners of Aboriginal land in the area of the Council;
  - (b) any Aboriginal living in the area of the Council.

**72 Subsection 31(8)**

Repeal the subsection.

**73 At the end of section 31**

Add:

*Minutes*

- (10) A Land Council must keep minutes of its meetings.
- (11) A Land Council must allow the following persons to inspect, at any reasonable time without charge, the minutes of its meetings (other than any part of the minutes that relates to an excludable matter):
  - (a) the traditional Aboriginal owners of Aboriginal land in the area of the Council;
  - (b) any Aboriginal living in the area of the Council.

**74 After section 33**

Insert:

### **33A Land Council may charge fees for services**

- (1) A Land Council may charge a fee for services prescribed by the regulations that it provides in performing any of its functions, or exercising any of its powers, under this Act.
- (2) The fee must not be such as to amount to taxation.

### **75 Subsection 34(1)**

After “administrative costs”, insert “or capital costs”.

Note: The heading to section 34 is altered by omitting “**Administrative expenditure**” and substituting “**Expenditure**”.

### **76 At the end of subsection 34(1)**

Add:

Note: The Minister must have regard to approved estimates in determining what amounts are to be debited from the Account under subsection 64(1).

### **77 After subsection 34(1)**

Insert:

- (1A) A Land Council must, at the time it submits estimates to the Minister under subsection (1), notify the Minister, in such form as the Minister directs, of:
  - (a) the total amount of fees it expects to receive under section 33A during the period to which those estimates relate; and
  - (b) the total amount of other income it expects to receive during the period to which those estimates relate in relation to performing functions or exercising powers under this Act.

Note: The Minister must have regard to these amounts in determining what amounts are to be debited from the Account under subsection 64(1).

- (1B) Paragraph (1A)(b) does not apply to:
  - (a) a payment made to a Land Council as mentioned in subsection 35(2), (3), (4) or (4B); or
  - (b) interest received by a Land Council as mentioned in subsection 35(11) in relation to such a payment.

### **78 Subsection 34(2)**

After “administrative costs”, insert “or capital costs”.

**79 After subsection 34(3)**

Insert:

- (3AA) Nothing in subsection (3) empowers a Land Council to spend amounts, in relation to matters covered by the estimates approved by the Minister, that exceed the total amount of expenditure provided for by those estimates.

**80 Subsection 34(4)**

Repeal the subsection, substitute:

- (4) In this section:

*administrative costs* of a Land Council includes:

- (a) the cost of providing services for which the Council may charge a fee under section 33A; and
- (b) the cost of paying remuneration and allowances that are payable under this Act to:
  - (i) a member of the Council; or
  - (ii) a member of a Land Trust holding land, or established to hold land, in the area of the Council.

**81 Subsection 35(1)**

Repeal the subsection, substitute:

- (1) A Land Council must spend the following amounts in meeting its administrative costs or capital costs, in accordance with section 34, in the financial year in which the amounts are received or in the next financial year:
- (a) money paid to the Council under subsection 64(1);
  - (b) fees the Council receives under section 33A;
  - (c) other income the Council receives in relation to performing functions or exercising powers under this Act.
- (1A) Paragraph (1)(c) does not apply to:
- (a) a payment made to a Land Council as mentioned in subsection (2), (3), (4) or (4B); or
  - (b) interest received by a Land Council as mentioned in subsection (11) in relation to such a payment.



**82 Subsection 35(2)**

Omit “Moneys”, substitute “Subject to this section, moneys”.

**83 At the end of subsection 35(2)**

Add:

- Note 1: A determination must satisfy the requirement in section 35A.
- Note 2: Sections 35B and 35C impose requirements on a body corporate that receives an amount under a determination.
- Note 3: The activities or operations of a body corporate receiving an amount under a determination may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.

**84 Subsection 35(2A)**

Repeal the subsection.

**85 Subsection 35(3)**

Omit “Within”, substitute “Subject to this section, within”.

**86 At the end of subsection 35(3)**

Add:

- Note 1: A determination must satisfy the requirements in section 35A.
- Note 2: Sections 35B and 35C impose requirements on a body corporate that receives an amount under this subsection.
- Note 3: The activities or operations of a body corporate or other person receiving an amount under this subsection may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.

**87 After subsection 35(4)**

Insert:

(4A) If:

- (a) a Land Council receives a payment as mentioned in subsection (4); and
- (b) the payment is made by the Commonwealth, the Northern Territory or an Authority; and
- (c) the payment is of a kind prescribed by the regulations for the purposes of this subsection; and
- (d) under subsection (4), the Land Council pays an amount equal to that payment to a person;

the Land Council must, at the time it pays that amount, advise the person in writing that the amount is an accountable amount.

Note 1: Sections 35B and 35C impose requirements on a body corporate in relation to accountable amounts.

Note 2: The activities or operations of a body corporate or other person receiving an accountable amount may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.

## 88 Before subsection 35(5)

Insert:

- (4B) If a Land Council receives a payment in respect of Aboriginal land under a lease under section 19A, the Land Council must, within 6 months of receiving the payment, pay an amount equal to that payment to an Incorporated Aboriginal Association for the benefit of the traditional Aboriginal owners of the land.

## 89 Subsection 35(5)

Omit “(1),”.

## 90 Paragraph 35(6)(b)

Before “the Land”, insert “subject to this section,”.

## 91 At the end of subsection 35(6)

Add:

Note 1: Sections 35B and 35C impose requirements on a body corporate that receives an amount under a determination.

Note 2: The activities or operations of a body corporate receiving an amount under a determination may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.

## 92 After subsection 35(6)

Insert:

- (6A) If:
- (a) a body corporate spends an amount it received under a determination under subsection (2), (3) or (6); and
  - (b) the Land Council concerned is satisfied that the body corporate has not complied with section 35C in respect of the financial year in which the body corporate spent the amount;

the Land Council may, by notice in writing given to the body corporate, suspend payments under a determination under subsection (2), (3) or (6) of this section, as the case may be, to the body corporate until the body corporate does so comply.

- (6B) If a Land Council gives a notice under subsection (6A), the Council must:
- (a) hold an amount that would have been paid to the body corporate, apart from the giving of that notice, in trust for the body corporate; and
  - (b) hold the amount in trust until it is paid to the body corporate.
- (6C) During the period of a suspension under subsection (6A), the Land Council may, under subsection 35A(3) or (4):
- (a) vary a determination under subsection (2), (3) or (6) of this section, as the case may be, so that the determination no longer applies in respect of the body corporate and instead applies in respect of another body corporate; or
  - (b) revoke a determination under subsection (2), (3) or (6) of this section, as the case may be, in respect of the body corporate and make a new determination under subsection (2) or (3) of this section, as the case may be, in respect of another body corporate.
- (6D) If subsection (6C) applies, the Land Council must pay to the other body corporate any amount held in trust in accordance with subsection (6B). This subsection applies despite subsection (6B).
- Note: Interest may also be payable to the other body corporate under subsection (11).
- (6E) A notice under subsection (6A) is not a legislative instrument.

### **93 Subsection 35(7)**

Repeal the subsection.

### **94 Subsection 35(8)**

Omit “under subsection (2), (3) or (4)”, substitute “as mentioned in subsection (2), (3), (4) or (4B)”.

### **95 Subsection 35(9)**

Omit “(1),”.

**96 Subsection 35(9)**

After “(4)”, insert “, (4B)”.

**97 Subsection 35(10)**

After “in subsection”, insert “(6B),”.

**98 Subsection 35(10)**

Omit “(7),”.

**99 At the end of subsection 35(11)**

Add:

Note 1: Sections 35B and 35C impose requirements on a body corporate that receives an amount under this subsection.

Note 2: The activities or operations of a person receiving a payment under this subsection in certain circumstances may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.

**100 Subsection 35(12)**

Repeal the subsection.

**101 Section 35A**

Repeal the section, substitute:

**35A Making of determinations under subsection 35(2), (3) or (6)**

- (1) A Land Council must have regard to the following matters before making a determination under subsection 35(2) or (3) in relation to a body corporate:
  - (a) any report:
    - (i) of an evaluation or audit conducted under paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005* in relation to the body; and
    - (ii) that was given to the Minister administering Part 4B of that Act in the period of 5 years before the time when the Council began to consider making the determination;
  - (b) if the body was required to comply with section 35C for one or more of the previous 5 financial years—whether the body has so complied.

- (2) A determination under subsection 35(2), (3) or (6) must be in writing and must specify the period, not exceeding 5 years, for which it is in force.
- (3) A Land Council may vary or revoke a determination under subsection 35(2) or (3). The variation or revocation must be in writing.
- (4) A Land Council may, with the Minister's approval, vary or revoke a determination under subsection 35(6). The variation or revocation must be in writing.
- (5) A determination under subsection 35(2), (3) or (6) is not a legislative instrument.

### **35B Notification requirements for body corporate receiving money from Land Council**

A body corporate that spends an amount that it received:

- (a) under a determination under subsection 35(2), (3) or (6); or
  - (b) under subsection 35(3) in accordance with an agreement mentioned in that subsection; or
  - (c) under subsection 35(4) that the Land Council concerned has advised, under subsection 35(4A), is an accountable amount; or
  - (d) under subsection 35(4B); or
  - (e) under subsection 35(11) in relation to an amount covered by paragraph (a), (b), (c) or (d) of this section; or
  - (f) under subsection 67B(6) that the Land Council concerned has advised, under subsection 67B(7), is an accountable amount;
- must inform the recipient of the amount of the purpose of the payment.

### **35C Reporting obligations for body corporate receiving money from Land Council**

- (1) This section applies to a body corporate that spends an amount in a financial year (the *reporting year*) that it received in that year or an earlier financial year:
  - (a) under a determination under subsection 35(2), (3) or (6); or

- (b) under subsection 35(3) in accordance with an agreement mentioned in that subsection; or
  - (c) under subsection 35(4), but only if the Land Council concerned has advised, under subsection 35(4A), that the amount the body corporate received is an accountable amount; or
  - (d) under subsection 35(4B); or
  - (e) under subsection 35(11) in relation to an amount covered by paragraph (a), (b), (c) or (d) of this subsection; or
  - (f) under subsection 67B(6), but only if the Land Council concerned has advised, under subsection 67B(7), that the amount the body corporate received is an accountable amount.
- (2) The body corporate must give the Land Council concerned:
- (a) a copy of the financial statements that the body is required, under the law under which it is incorporated, to give in respect of the reporting year; and
  - (b) a written report setting out:
    - (i) the purpose for which that amount was spent (including details of any relevant project); and
    - (ii) each recipient of that amount; and
    - (iii) the amount paid to each recipient and the day or days the amount was paid.
- (3) The body corporate must comply with subsection (2) within 30 days after the day by which it is required to give those financial statements.

Note: A body corporate's failure to do so may affect future payments to the body: see subsections 35(6A) to (6D) and section 35A.

## **102 Section 37**

Repeal the section, substitute:

### **37 Additional Land Council reporting requirements**

- (1) The annual report of a Land Council under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include the matters set out in this section in relation to the financial year to which the report relates.

*Fees*

- (2) The report must specify:
- (a) the total fees the Council received under section 33A during that year for services the Council provided under Part IV (whether in that year or the previous year); and
  - (b) the total fees the Council received under section 33A during that year for any other services the Council provided (whether in that year or the previous year).

*Section 35 determinations*

- (3) The report must include:
- (a) particulars of any determinations made by the Council under subsection 35(2) or (3) during that year; and
  - (b) particulars of any determinations made by the Minister under subsection 35(6) during that year.

*Details of amounts paid*

- (4) The report must include for each amount paid by the Council during that year:
- (a) under a determination made under subsection 35(2); or
  - (b) under a determination made under subsection 35(6) (in so far as that determination was made because the Council did not make a determination under subsection 35(2)); or
  - (c) under subsection 35(4) that the Council has advised, under subsection 35(4A), is an accountable amount; or
  - (d) under subsection 35(4B); or
  - (e) under subsection 35(11) in relation to an amount covered by paragraph (a), (b), (c) or (d) of this subsection; or
  - (f) under subsection 67B(6) that the Council has advised, under subsection 67B(7), is an accountable amount;
- the following details:
- (g) the recipient of the amount;
  - (h) the subsection under which the amount was paid;
  - (i) the total of the amount paid.

*Details of amounts held in trust*

- (5) If, at the end of that year, the Council holds an amount:

- (a) paid to the Council, in any financial year, as mentioned in subsection 35(2) or (3); and
  - (b) in trust as mentioned in subsection 35(6B), (8) or (9);
- the report must include the following details:
- (c) the amount paid to the Council and the financial year in which the amount was paid;
  - (d) the amount held in trust;
  - (e) the mining operations concerned.

*Details of section 28 delegations*

- (6) If a delegation under section 28 to a body corporate is in force at any time during that year, the report must include particulars of the activities of the body during that year to the extent they relate to the delegation.

*Details of section 29A committees*

- (7) If the appointment of a committee under 29A is in force at any time during that year, the report must include particulars of the activities of the committee during that year.

*Details of consultants*

- (8) The report must specify:
  - (a) each consultant engaged by the Council during that year to do work in relation to the Council's performance of functions or exercise of powers under this Act; and
  - (b) the amount paid to the consultant by the Council during that year for that work.

**103 At the end of Part III**

Add:

**38 Minister to provide evaluation or audit reports to Land Council**

If the Minister receives a copy of a report of an evaluation or audit conducted under paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005* in relation to a body corporate, the Minister must provide a copy of the report to the Land Council that paid the amount referred to in that paragraph.



### **39 Minister may give directions about Land Council finances**

- (1) The Minister may give a written direction to a Land Council about the administration of the Council's finances.
- (2) A direction under subsection (1) must not be inconsistent with:
  - (a) this Act or the regulations under this Act; or
  - (b) the *Commonwealth Authorities and Companies Act 1997*, or regulations or Finance Minister's Orders made under that Act.
- (3) A Land Council must comply with a direction that is in force under subsection (1).
- (4) A direction under subsection (1) is not a legislative instrument.

### **104 Paragraph 40(a)**

Repeal the paragraph, substitute:

- (a) both of the following occur:
  - (i) the Land Council for the area in which the land is situated gives consent under subsection 42(1) to the grant of the licence;
  - (ii) the Minister gives consent under subsection 42(8) to the grant of the licence; or

### **105 At the end of subsection 41(1)**

Add:

Note: If the consent of the Northern Territory Mining Minister is withdrawn, then the application is also taken to have been withdrawn: see section 41A.

### **106 Subsection 41(2)**

Repeal the subsection, substitute:

- (2) The person must make the application:
  - (a) within the period (the *standard period*) of 3 months after the consent of the Northern Territory Mining Minister was given; or
  - (b) if before the end of the standard period the person requests, in writing, the Minister to extend the standard period:

- (i) if the Minister grants the request—within the extension period; or
- (ii) if the Minister refuses the request—before the end of the period of 7 days beginning on the day the person receives notice of the refusal.

(2A) The Minister must decide any extension request within 6 weeks of receiving it. The Minister must, by notice in writing given to the person:

- (a) extend the standard period for a period not exceeding 3 months; or
- (b) refuse to extend the standard period.

**107 Subsection 41(4)**

Repeal the subsection.

**108 After subsection 41(6)**

Insert:

(6A) Strict compliance with subsection (6) is not necessary and substantial compliance is sufficient.

**109 Subsection 41(7)**

Repeal the subsection.

**110 After section 41**

Insert:

**41A Withdrawal of application for consent to exploration licence**

If the consent of the Northern Territory Mining Minister referred to in subsection 41(1) is withdrawn before the Land Council consents, or refuses to consent, to the grant of an exploration licence in respect of the Aboriginal land concerned, the application under that subsection is taken to have been withdrawn on the day the consent is withdrawn.

**111 Paragraph 42(1)(a)**

Before “either,”, insert “by notice in writing,”.

**112 At the end of paragraph 42(1)(b)**

---

Add “and of the day on which the decision is made”.

### **113 After subsection 42(1)**

Insert:

- (1AA) The Land Council must notify the applicant, the Minister and the Northern Territory Mining Minister of its decision within 7 days of making the decision.
- (1A) A notice under paragraph (1)(a) is not a legislative instrument.
- (1B) If the Land Council does not make a decision under paragraph (1)(a) before the end of the negotiating period, the consent of the Northern Territory Mining Minister referred to in subsection 41(1) is taken to be withdrawn at the end of that period.

### **114 Subsection 42(5)**

Repeal the subsection, substitute:

- (5) The Minister may, in writing, authorise a specified person, or any person included in a specified class of persons, to:
  - (a) attend the meeting, or each meeting, referred to in paragraph (4)(c); and
  - (b) attend any subsequent meeting.
- (5A) However, a person covered by subsection (5) must not attend any subsequent meeting if the traditional Aboriginal owners as a group:
  - (a) decide that the person must not attend; and
  - (b) notify the Minister, through the Land Council, of that decision.

### **115 Subsection 42(7)**

Repeal the subsection, substitute:

- (7) If, at any time within the negotiating period, the Land Council notifies the Minister in writing that the Council and the applicant agree that the terms and conditions should be dealt with by arbitration, the Council is, for the purposes of this Part, taken to have consented to the grant of the licence on the day of the notification.

### **116 Subsection 42(8)**

After “determine”, insert “, in writing,”.

**117 After subsection 42(8)**

Insert:

- (8A) A determination under subsection (8) is not a legislative instrument.

**118 Subsection 42(11)**

Omit “paragraph 42(7)(a)”, substitute “subsection (7)”.

**119 Subsections 42(13), (14) and (15)**

Repeal the subsections, substitute:

*Standard negotiating period*

- (13) Subject to subsections (15) and (17), the *negotiating period* for an application is the period beginning on the day the application is received by the Land Council and ending at the end of:
- (a) the period of 22 months beginning on 1 January in the calendar year after the calendar year in which the application is received by the Council; or
  - (b) if, before the end of that 22 month period, the applicant and the Council agree in writing to extend that period by 2 years—that 2 year period; or
  - (c) if, before the end of the following period (the *agreed period*):
    - (i) that 2 year period;
    - (ii) any 12 month period applicable under any application or applications of this paragraph;the applicant and the Council agree in writing to extend the agreed period by 12 months—that 12 month period.

*Notification of extension agreed between the applicant and the Land Council*

- (14) The Land Council must notify the Minister and the Northern Territory Mining Minister of any extension agreed under paragraph (13)(b) or (c).

*Ministerial deadline*

- (15) At any time during a period applicable under paragraph (13)(b) or (c), the Minister may, in writing, determine that a specified day is to be the end of the negotiating period (which must be a day at least 12 months after the day of the determination).

*Consultation*

- (16) The Minister must, before making a determination under subsection (15), consult the applicant, the Land Council and the Northern Territory Mining Minister. The Minister may conduct the consultation during the period applicable under paragraph (13)(a).

*Special negotiating period for some applications*

- (17) If:
- (a) a person makes an application (the **original application**) under section 41; and
  - (b) subsection (1B) of this section applies in relation to the original application; and
  - (c) the person makes a later application under section 41 and the comprehensive proposal set out in the later application is substantially the same as the comprehensive proposal set out in the original application;

the **negotiating period** for the later application is the period determined by the Minister under subsection (18).

- (18) The Minister must, in writing, determine a period for the purposes of subsection (17). The period must not be more than 12 months beginning on the day the later application is received by the Land Council.

- (18A) If:

- (a) subsection (17) applies; and
- (b) any necessary meetings of the kind referred to in subsection (4) were held in relation to the original application;

then the Land Council is not required to hold any further meeting of the kind referred to in subsection (4) in relation to the later application.

*Notice of determination*

- (19) The Minister must give written notice of a determination under subsection (15) or (18) to:
- (a) the applicant; and
  - (b) the Land Council; and
  - (c) the Northern Territory Mining Minister.

*Determination not a legislative instrument*

- (20) A determination made under subsection (15) or (18) is not a legislative instrument.

**120 Subsection 43(1)**

Omit “shall, within 180 days, or such longer period as is agreed upon in writing between the applicant and the Land Council, after the Proclamation takes effect,”, substitute “must, within the negotiating period,”.

**121 Subsections 43(3) and (4)**

Repeal the subsections, substitute:

*Consultation obligations*

- (3) In order to facilitate consultation between the Land Council and the traditional Aboriginal owners:
- (a) the Council must convene such meetings with them as are necessary for the purpose of considering the terms and conditions; and
  - (b) the Council must give reasonable notice to the applicant and the Minister before each meeting which the applicant and the Minister are entitled to attend; and
  - (c) the representatives of the applicant may attend so much of the first meeting at which the terms and conditions are discussed as is appropriate for the purpose of outlining the applicant’s views concerning the terms and conditions; and
  - (d) the representatives of the applicant may attend so much of any subsequent meeting as is appropriate for the purpose referred to in paragraph (c) unless the traditional Aboriginal owners as a group:
    - (i) decide that the representatives must not attend; and

- (ii) notify the applicant, through the Council, of that decision.

*Minister's representative may attend meetings*

- (4) A representative of the Minister:
  - (a) may attend the meeting referred to in paragraph (3)(c); and
  - (b) may attend any subsequent meeting unless the traditional Aboriginal owners as a group:
    - (i) decide that the representative must not attend; and
    - (ii) notify the Minister, through the Council, of that decision.

*Negotiating period*

- (5) Subject to subsection (6), the *negotiating period* is:
    - (a) the period of 180 days after the Proclamation referred to in subsection (1) takes effect; or
    - (b) such longer period as is agreed upon in writing between the applicant and the Land Council.
  - (6) If:
    - (a) the Land Council, within the period applicable under paragraph (5)(a) or (b), requests the Minister to extend that period; and
    - (b) the Minister, after consulting the Northern Territory Mining Minister, is satisfied that:
      - (i) it is not reasonably practicable for the Council to perform its functions under this section within that period; and
      - (ii) it is appropriate to extend that period in all the circumstances;
- the Minister may, by notice in writing given to the applicant, the Land Council and the Northern Territory Mining Minister, determine the negotiating period to be a specified longer period.

**122 Subsection 44(2)**

Omit “an arbitrator agreed upon by the parties”, substitute “arbitration in accordance with the *Commercial Arbitration Act* of the Northern Territory”.

**123 Subsection 44(4)**

Repeal the subsection, substitute:

- (4) If paragraph (1)(b) applies, the applicant or the Land Council, or both, may, in writing, request the Minister to refer the terms and conditions to a person appointed by the Minister as a Mining Commissioner for determination by conciliation or, failing that, by arbitration.

**124 Subsection 44(9)**

Omit “under”, substitute “in accordance with”.

**124A Paragraph 44A(2)(b)**

Omit “exploration retention lease”, substitute “exploration retention licence”.

**124B Paragraph 44A(2)(b)**

Omit “or lease”, substitute “or exploration retention licence”.

**124C Paragraph 44A(2)(c)**

Omit “exploration retention lease” (wherever occurring), substitute “exploration retention licence”.

**124D Subsection 46(1)**

Omit “exploration retention lease (whether that licence or lease”, substitute “exploration retention licence (whether that exploration licence or exploration retention licence”.

**128 Subsection 46(6)**

Repeal the subsection, substitute:

- (6) The Minister may, in writing, authorise a specified person, or any person included in a specified class of persons, to:
  - (a) attend the first meeting; and
  - (b) attend any subsequent meeting.
- (6A) However, a person covered by subsection (6) must not attend any subsequent meeting if the traditional Aboriginal owners as a group:
  - (a) decide that the person must not attend; and



- (b) notify the Minister, through the Land Council, of that decision.

**129 Subsection 46(7)**

Omit “by the Minister”.

**130 Subsection 46(8)**

Omit “appoint a person, in accordance with section 48F, as a Mining Commissioner”, substitute “arrange for a person to be appointed as a Mining Commissioner under section 48F”.

**131 Subsection 46(10)**

Omit “appoint another person under section 48F as a Mining Commissioner”, substitute “arrange for another person to be appointed as a Mining Commissioner under section 48F”.

**131A Subsection 46(17)**

Omit “exploration retention lease”, substitute “exploration retention licence”.

**132 Section 47**

Repeal the section, substitute:

**47 Cancellation of exploration licence or mining interest**

*Exploration works*

(1) If:

- (a) a Land Council has consented to the grant of an exploration licence (including because of the operation of subsection 42(7)); and
- (b) the Council, by notice in writing to the Minister, states that:
  - (i) the licence-holder is conducting, or is likely to conduct, exploration works otherwise than in accordance with the proposed exploration program referred to in the application for that consent; and
  - (ii) the exploration works are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Council would not have consented to the grant of the licence;

the Minister must, within 90 days after receiving the notice:

- (c) consult the Northern Territory Mining Minister; and
  - (d) determine, in writing, whether the Minister is satisfied that the Council was entitled to make the statement; and
  - (e) determine, in writing, whether the Minister is satisfied that the national interest does not require that the exploration works should proceed.
- (2) If the Minister determines that he or she is satisfied of the matters in paragraphs (1)(d) and (e):
- (a) the Minister must inform the Land Council and the licence-holder; and
  - (b) the exploration licence is cancelled under this subsection.

*Mining works or activities*

- (3) If an intending miner causes a copy of a statement of mining proposals to be sent to the Minister under subsection 46(2), the Minister must, within 90 days after receiving the statement:
- (a) determine, in writing, whether the Minister is satisfied that:
    - (i) the proposed mining works or related activities are not in accordance with the description set out under paragraph 41(6)(e) in respect of the application relating to the relevant exploration licence; and
    - (ii) the Land Council consented to the grant of the licence (including because of the operation of subsection 42(7)); and
    - (iii) the works or activities are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Council would not have consented to the grant of the licence; and
  - (b) determine, in writing, whether the Minister is satisfied that the national interest does not require that the works or activities should proceed.
- (4) If the Minister determines that he or she is satisfied of the matters in paragraphs (3)(a) and (b):
- (a) the Minister must inform the Land Council and the intending miner; and
  - (b) if the mining interest applied for has not yet been granted—the application must not be granted; and

- (c) if the mining interest has been granted—the interest is cancelled under this subsection.

*Determination not a legislative instrument*

- (5) A determination under paragraph (1)(d) or (e) or (3)(a) or (b) is not a legislative instrument.

**133 Before subsection 48(1)**

Insert:

- (1A) Subsections (1) to (4A) have 2 separate applications as follows:
- (a) the first application is in relation to petroleum and for this purpose those subsections apply as if:
    - (i) a reference to a refusal to consent to the grant of an exploration licence were a reference to a refusal to consent to the grant of an exploration licence in relation to petroleum; and
    - (ii) a reference to an application under section 41 in respect of particular land or an area within that land were a reference to an application under section 41 in relation to petroleum in respect of that land or an area within that land;
  - (b) the second application is other than in relation to petroleum and for this purpose those subsections apply as if:
    - (i) a reference to a refusal to consent to the grant of an exploration licence were a reference to a refusal to consent to the grant of an exploration licence other than in relation to petroleum; and
    - (ii) a reference to an application under section 41 in respect of particular land or an area within that land were a reference to an application under section 41 other than in relation to petroleum in respect of that land or an area within that land.

**134 Subsection 48(1)**

Omit “or (4)”, substitute “, (4) or (4A)”.

**135 At the end of subsection 48(2)**

Add:

Note: See also the requirement in subsection (4B) (about having a consent to negotiate).

**136 Paragraph 48(3)(b)**

Omit “not less than 2 years from”, substitute “at any time after”.

**137 Subsection 48(3)**

After “Minister shall”, insert “, subject to subsection (3A),”.

**138 At the end of subsection 48(3)**

Add:

Note: See also the requirement in subsection (4B) (about having a consent to negotiate).

**139 After subsection 48(3)**

Insert:

(3A) However, if:

- (a) the refusal under paragraph (3)(a) is in relation to a body corporate; and
- (b) at the time the Minister is satisfied of the matters referred to in paragraph (3)(c), the body corporate has been wound up and has not assigned its rights in relation to this section;

then the Minister may, under subsection (3), authorise an application in respect of the land concerned or an area within that land to be made by any person under section 41 within the period applicable under subsection 41(2).

**140 Subsection 48(4)**

Omit “Where”, substitute “Subject to subsection (4A), if”.

**141 At the end of subsection 48(4)**

Add:

Note: See also the requirement in subsection (4B) (about having a consent to negotiate).

**142 After subsection 48(4)**

Insert:

(4A) However, if:

- (a) the refusal under paragraph (4)(a) is in relation to a body corporate; and
- (b) at the start of the re-application period, the body corporate has been wound up and has not assigned its rights in relation to this section;

then an application in respect of the land concerned or an area within that land may be made by any person under section 41 within the period applicable under subsection 41(2).

Note: See also the requirement in subsection (4B) (about having a consent to negotiate).

- (4B) A person cannot make an application under section 41 as provided for in subsection (2), (3), (4) or (4A) of this section unless the person has in force a consent of the Northern Territory Mining Minister referred to in subsection 41(1).

**143 Subsection 48(5)**

Omit “subsection 47(6) or (7)”, substitute “subsection 47(2) or (4)”.

**143A Subsection 48(7)**

Omit “exploration retention lease”, substitute “exploration retention licence”.

**144 Paragraph 48(9)(b)**

Omit “notice of that refusal so to consent is received by the Northern Territory Mining Minister”, substitute “the day on which the refusal decision was made”.

**145 At the end of subsection 48(9)**

Add:

Note: Paragraph 42(1)(b) requires the Land Council to notify the applicant, the Minister and the Northern Territory Mining Minister of its refusal decision and of the day on which the refusal decision is made.

**147 Subsection 48B(1)**

Omit “appoint”, substitute “arrange for a person to be appointed as”.

**148 Subsection 48B(2)**

Omit “appoint a person”, substitute “arrange for a person to be appointed”.

**149 Subsection 48E(1)**

Omit “appoint a person”, substitute “arrange for a person to be appointed”.

**150 Subsection 48F(1)**

Omit “Where the Minister is required to appoint a Mining Commissioner”, substitute “If a Mining Commissioner is to be appointed”.

**151 At the end of paragraph 48F(1)(a)**

Add “or”.

**152 Paragraph 48F(1)(c)**

After “Arbitrators”, insert “and Mediators”.

**153 At the end of subsection 48F(1)**

Add:  
; or (d) a person prescribed by the regulations.

**154 Subsection 48F(2)**

Omit “Where the Minister is required to appoint a Mining Commissioner”, substitute “If a Mining Commissioner is to be appointed”.

**155 Subsection 48F(3)**

Omit “section 44B”, substitute “section 48B”.

**156 Subsection 48F(4)**

Omit “subsection (2)”, substitute “subsection (3)”.

**157 Subsection 48F(6)**

Omit “subsection (4)”, substitute “subsection (5)”.

**158 Subsection 48F(6)**

Omit “Chamber of Mines (Incorporated)”, substitute “Minerals Council (Incorporated)”.

**159 Subsection 48J(1)**

After “section”, insert “33A,”.

---

**160 Paragraphs 48J(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) in the case of a natural person—a fine of not more than 120 penalty units or imprisonment for not more than 2 years, or both; or
- (b) in the case of a body corporate—a fine of not more than 600 penalty units.

**161 Paragraphs 48J(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) in the case of a natural person—a fine of 60 penalty units or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—a fine of 300 penalty units.

**162 Subsection 48J(5)**

Repeal the subsection.

**163 Subsection 50(2B)**

Omit “in which”, substitute “to which”.

**164 Paragraph 50(2D)(a)**

Omit “section”, substitute “subsection”.

**165 Subsection 52(3)**

Repeal the subsection.

**166 Subsection 53(1)**

After “is”, insert “or has been”.

Note: The heading to section 53 is altered by inserting “**or former Judge**” after “**Judge**”.

**167 Subsection 53(2)**

Repeal the subsection.

**168 Subsection 54(6) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

**169 Subsection 54A(2) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

**170 Paragraphs 54AA(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) in the case of a natural person—a fine of not more than 60 penalty units or imprisonment for not more than 12 months, or both; or
- (b) in the case of a body corporate—a fine of not more than 300 penalty units.

**171 Subsection 57(4)**

After “is”, insert “or has been”.

**172 After section 62**

Insert:

**62A Minimum investment amount**

- (1) The Minister may, by writing, determine an amount (the *investment amount*) for the purposes of this section.
- (2) If, at any time while the determination is in effect, the total of the amounts that:
  - (a) have been debited from the Account; and
  - (b) are invested in accordance with section 39 of the *Financial Management and Accountability Act 1997*;is less than the investment amount, the balance is to be available to be debited from the Account for the purpose of being so invested (and not for any other purpose).
- (3) A determination takes effect on the day specified in the determination.
- (4) A determination is not a legislative instrument.

**173 Subsection 64(1)**

Omit “in such proportions”, substitute “such amounts”.

**174 Subsection 64(1)**

---



Omit “having regard to the number of Aboriginals living in the area of each Council, an amount equal to 40% of the amounts credited to the Account in accordance with subsection 63(1) or (4).”, substitute:

having regard to the following in relation to each Land Council:

- (a) the most recent estimates approved by the Minister under section 34;
- (b) the most recent amounts notified to the Minister under subsection 34(1A);
- (c) any surplus specified in the most recent financial statements prepared under clause 2 of Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* and given to the Minister.

**175 Subsection 64(2)**

Repeal the subsection.

**176 At the end of subsection 64(4)**

Add:

Note: The activities or operations of any individual or organisation that receives a payment under this subsection may be evaluated or audited: see paragraph 193X(1)(cc) of the *Aboriginal and Torres Strait Islander Act 2005*.

**177 After subsection 64(4)**

Insert:

- (4A) There must be debited from the Account and paid by the Commonwealth such other amounts as the Minister directs to be paid in relation to:
- (a) the acquiring of leases by, or the administering of leases granted or transferred to, approved entities under section 19A; or
  - (b) the payment of amounts under leases granted or transferred to approved entities under section 19A.

**178 Subsection 64(5)**

Omit “on such conditions as the Minister thinks fit”.

**179 After subsection 64(5)**

Insert:

- (5A) The Minister may, by notice in writing, specify conditions on which a payment of an amount to a person under subsection (4) (including by way of a loan) is made. The notice is not a legislative instrument.
- (5B) If a condition on which a payment of an amount to a person under subsection (4) is made is breached, the Minister, on behalf of the Commonwealth, may:
- (a) if the payment is by way of a loan—recover so much of the loan as has not been repaid, and any accrued interest that has not been paid, as a debt in a court of competent jurisdiction; or
  - (b) in any other case—recover the whole or a part of the amount as a debt in a court of competent jurisdiction.

**180 Subsection 64(7)**

Omit “or (6)”, substitute “, (4A) or (6)”.

**181 Subsection 64(8)**

Repeal the subsection.

**182 Subsection 64A(5)**

After “administrative costs”, insert “or capital costs”.

**183 Subsection 64A(7)**

After “administrative costs”, insert “or capital costs”.

**184 At the end of subsection 65(2)**

Add:

; and (c) any member appointed by the Minister under subsection (4).

**185 Subsection 65(3)**

Omit “other members of the Account Advisory Committee”, substitute “members of the Committee elected by each Land Council”.

**186 At the end of section 65**

Add:

(4) The Minister may, by writing, appoint 1 or 2 persons to be members of the Committee.

- (5) The Minister must not appoint a person as a member under subsection (4) unless the Minister is satisfied that the person has professional expertise in:
  - (a) land management; or
  - (b) business or financial management.
- (6) A member of the Committee may be re-appointed or re-elected.
- (7) The period of any appointment or election (or any re-appointment or re-election) must not exceed 3 years.

**187 At the end of subsection 67A(1)**

Add:

Note: Subsection (1) does not apply to certain grants: see section 67B.

**188 At the end of subsection 67A(2)**

Add:

Note: Subsection (2) does not apply to certain grants: see section 67B.

**189 Subsection 67A(5)**

Omit “A traditional”, substitute “Subject to subsections (6), (7), (8), (9), (12) and (17), a traditional”.

**190 At the end of paragraphs 67A(5)(a) and (b)**

Add “or”.

**191 Paragraph 67A(5)(c)**

Repeal the paragraph, substitute:

- (c) the Commissioner informs the Minister, in the Commissioner’s report to the Minister in respect of the claim:
  - (i) that the Commissioner finds that there are no Aboriginals who are the traditional Aboriginal owners of the area of land; or
  - (ii) that the Commissioner is unable to make a finding that there are Aboriginals who are the traditional Aboriginal owners of the area of land; or

**192 At the end of section 67A**

Add:

(6) If:

- (a) an application has been made under section 50 by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land; and
- (b) either:
  - (i) the application was made on or after 5 June 1997; or
  - (ii) subsection 50(2D) applies to the whole or a part of that land;

then:

- (c) if subparagraph (b)(i) applies—the traditional land claim is taken to have been finally disposed of; and
- (d) if subparagraph (b)(ii) applies—the traditional land claim, to the extent to which subsection 50(2D) applies, is taken to have been finally disposed of.

Note: Subparagraph (b)(i) relates to subsection 50(2A), which prevents Commissioners considering applications relating to traditional land claims made after the expiration of 10 years after the commencement of that subsection. That subsection commenced on 5 June 1987.

(7) If:

- (a) an application has been made under section 50 by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land; and
  - (b) after the commencement of this subsection, the Commissioner requests the applicants, in writing, to provide further information in relation to the application within a period specified in the request (which must be at least 6 months from the making of the request) and the Commissioner determines in writing that the further information is not provided within that period;
- the traditional land claim is taken to have been finally disposed of.

(8) If:

- (a) an application has been made under section 50 by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land; and
- (b) paragraphs 50(2B)(b) and (c) are satisfied but the Commissioner has not made a finding under paragraph

50(2B)(d), (e) or (f) in relation to common land (within the meaning of subsection 50(2B)); and

- (c) after the commencement of this subsection, either:
  - (i) the Commissioner determines in writing that the Commissioner is satisfied that there are not sufficient grounds for the making of such a finding; or
  - (ii) the Commissioner requests the applicants, in writing, to provide further information in relation to the application within 6 months of the making of the request and the Commissioner determines in writing that the further information is not provided within that period;

the traditional land claim, in so far as it relates to the common land, is taken to have been finally disposed of.

(9) If:

- (a) an application has been made under section 50 by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land; and
- (b) the Commissioner is prevented, because of the operation of subsection 50(2C), from performing, or continuing to perform, a function under paragraph 50(1)(a) in relation to the application as it relates to land (the *held land*) in respect of which an estate or interest is held by or on behalf of Aboriginals; and
- (c) after the commencement of this subsection, either:
  - (i) the Commissioner determines in writing that the Commissioner is satisfied that the consent referred to in subsection 50(2C) has been refused; or
  - (ii) the Commissioner requests the applicants, in writing, to provide the consent referred to in subsection 50(2C) within 6 months of the making of the request and the Commissioner determines in writing that the consent is not provided within that period;

the traditional land claim, in so far as it relates to the held land, is taken to have been finally disposed of.

- (10) The Commissioner must provide a copy of a determination referred to in subsection (7), (8) or (9) to the applicants concerned and to the Chief Minister of the Northern Territory.

(11) A determination under subsection (7), (8) or (9) is not a legislative instrument.

(12) This subsection applies in relation to an application:

- (a) that was made under section 50 before the commencement of this subsection by or on behalf of Aboriginals claiming to have a traditional land claim to qualifying land (whether or not recommendations of the kind referred to in subparagraph 50(1)(a)(ii) have been made and whether or not the application covers other land); and
- (b) that was given the land claim number prescribed by the regulations.

The traditional land claim is taken to have been finally disposed of:

- (c) to the extent that it relates to qualifying land that is described in the regulations; and
  - (d) on the day on which the regulations take effect.
- (13) To avoid doubt, if regulations are made for the purposes of subsection (12) in relation to a particular application, then later regulations may also be made for the purposes of that subsection in relation to that application.

(14) In subsection (12):

***qualifying land*** means one or more of the following:

- (a) land between the high and low water marks;
- (b) the whole or a part of either or both banks of one or more rivers or creeks;
- (c) the whole or a part of the bed of one or more rivers or creeks;
- (d) one or more islands in one or more rivers or creeks.

(17) This subsection applies in relation to the application:

- (a) that was made under section 50 before the commencement of this subsection by the Northern Land Council on behalf of Aboriginals claiming to have a traditional land claim to unalienated Crown land in the Coomalie Shire/Deepwater Area; and
- (b) that was given the land claim number 238.

The traditional land claim is taken to have been finally disposed of to the extent that it relates to the following land:

- (c) Section 200 of the Hundred of Playford;

- (d) Section 201 of the Hundred of Playford;
- (e) Section 202 of the Hundred of Playford;
- (f) Section 210 of the Hundred of Howard.

Note: Subsection (12) or (13) may apply to other parts of the traditional land claim.

### **193 After section 67A**

Insert:

### **67B Certain estates or interests may be granted while land subject to traditional land claim**

#### *Conditions for grants of estates or interests*

- (1) Subsections 67A(1) and (2) do not apply to a grant of an estate or interest (other than a grant of an estate in fee simple or a lease in perpetuity) in the area of land concerned, or in a part of the area of land concerned, if:
  - (a) the Land Council for the area in which that land, or that part of that land, is situated enters into an agreement under subsection (2) of this section in relation to that grant; and
  - (b) for a grant the term of which exceeds 40 years—the Minister, by written notice, gives his or her consent to the grant.

Note: Grants of estates or interests in land in respect of which a traditional land claim has been made may be subject to the provisions of the *Native Title Act 1993*.

#### *Written agreements*

- (2) A Land Council may enter into a written agreement with a person in relation to a grant of an estate or interest in an area of land, or in a part of an area of land, specifying the terms and conditions on which the proposed grant is to be made.
- (3) A Land Council must not enter into an agreement under subsection (2) unless it is satisfied that:
  - (a) the traditional Aboriginal owners of the relevant land understand the nature and purpose of the proposed grant and, as a group, consent to it; and

- (b) any Aboriginal community or group that may be affected by the proposed grant has been consulted and has had adequate opportunity to express its view to the Council; and
  - (c) the terms and conditions on which the proposed grant is to be made are reasonable.
- (4) An agreement entered into by a Land Council under subsection (2) is binding on any successors to the Council.
- (5) If a Land Council fails to comply with subsection (3) in entering into an agreement under subsection (2), that failure does not invalidate the Council's entry into that agreement.

*Payments*

- (6) If a Land Council receives a payment under an agreement entered into under subsection (2), the Council must, within 6 months after receiving the payment:
- (a) apply the payment in accordance with the agreement; or
  - (b) if the agreement makes no provision in relation to the application of the payment—apply the payment to or for the benefit of the traditional Aboriginal owners of the area of land, or the part of the area of land, referred to in subsection (2).
- (7) If:
- (a) a Land Council receives a payment as mentioned in subsection (6); and
  - (b) the payment is made by the Commonwealth, the Northern Territory or an Authority; and
  - (c) the payment is of a kind prescribed by the regulations for the purposes of this subsection; and
  - (d) under subsection (6), the Land Council pays an amount equal to that payment to a person;
- the Land Council must, at the time it pays that amount, advise the person in writing that the amount is an accountable amount.

Note 1: Sections 35B and 35C impose requirements on a body corporate in relation to accountable amounts.

Note 2: The activities or operations of a body corporate or other person receiving an accountable amount may be evaluated or audited: see paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*.



*Commissioner to continue to assess land claim application*

- (8) To avoid doubt, if a grant of an estate or interest in land is made after the relevant requirements of subsection (1) have been satisfied, the Commissioner must continue to perform the function mentioned in paragraph 50(1)(a) in relation to that land.

*Estates or interests preserved*

- (9) If the Governor-General executes a deed of grant of an estate in fee simple in the area (the *claim area*) of land concerned, or in an area of land that includes the claim area, under section 12, any estate or interest granted in the claim area after the relevant requirements of subsection (1) of this section have been satisfied is preserved as an estate or interest in the claim area after the deed is executed.

*Consent of Minister not a legislative instrument*

- (10) A notice under paragraph (1)(b) is not a legislative instrument.

**194 Subsection 69(1) (penalty)**

Repeal the penalty, substitute:

Penalty:

- (a) for an individual—200 penalty units or imprisonment for 12 months; or  
(b) for a body corporate—1,000 penalty units.

**195 Subsection 69(3)**

After “he”, insert “or she”.

**196 Subsection 69(4)**

After “he” (wherever occurring), insert “or she”.

**197 Paragraph 69(4)(a)**

After “his”, insert “or her”.

**198 Paragraph 69(4)(b)**

After “him”, insert “or her”.

**199 Subsection 70(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

## 200 After subsection 70(2A)

Insert:

(2B) In proceedings for an offence against subsection (1), it is a defence if the person enters or remains on the land in accordance with an authorisation in force under subsection 19(13) (about Land Trust authorisations).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B) (see subsection 13.3(3) of the *Criminal Code*).

(2C) In proceedings against a person for an offence against subsection (1), it is a defence if:

- (a) the land (the *relevant land*) the person entered or remained on is part of land (the *leased land*) that is leased under section 19A; and
- (b) the person entered or remained on the relevant land for any purpose that is related to the use or enjoyment, of an estate or interest in the whole or a part of the leased land, by the owner of the estate or interest.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2C) (see subsection 13.3(3) of the *Criminal Code*).

## 201 Subsection 76(1)

After “other than” (first occurring), insert “section 19A or”.

## 202 Section 76

Repeal the section, substitute:

### 76 Delegation by Minister

*Delegation—except mining*

- (1) The Minister may, in writing, delegate to the Secretary of the Department, or an SES employee or acting SES employee in the Department, any of the Minister’s functions or powers under Part II, III, V, VI or VII, except those under section 19A.

*Delegation—mining*

- (2) The Minister may, in writing, delegate to the Northern Territory Mining Minister any of the Minister's functions or powers under Part IV, except those under these provisions:
  - (a) subsection 42(8) (about the consent to the grant of an exploration licence);
  - (b) subsection 43(6) (about determining an extension for negotiation in national interest cases);
  - (c) paragraph 45(b) (about the consent to the grant of a mining interest to an intending miner);
  - (d) paragraph 47(1)(e) (about determining whether the national interest does not require that exploration works should proceed);
  - (e) paragraph 47(3)(b) (about determining whether the national interest does not require that mining works or activities should proceed);
  - (f) paragraph 48C(1)(a) (about consenting to the application of the *Atomic Energy Act 1953* or any other Act in relation to entry to land);
  - (g) subsection 48E(3) (about entry into an agreement on behalf of a Land Council);
  - (h) subsection 48F(1), to the extent that it applies in relation to a request made under subsection 44(4) (about the appointment of a Mining Commissioner in national interest cases);
  - (i) subsection 48G(1) (about tabling Proclamations).
- (3) If a delegation under subsection (2) is made, the Northern Territory Mining Minister is taken to have executive authority to perform the delegated functions or exercise the delegated powers.
- (4) If the Minister delegates the Minister's function under subsection 41(2A) (about deciding extension requests for applications for consent to the grant of an exploration licence) to the Northern Territory Mining Minister, the Northern Territory Mining Minister may, in writing, delegate that function to another person.
- (5) A function that is performed by a person under a delegation under subsection (4) is taken, for the purposes of this Act, to have been performed by the Minister.

**203 At the end of subsection 77(1)**

---

Add:

; and (c) a member of the Account Advisory Committee referred to in section 65.

**204 Section 78**

Omit “a fine of \$200”, substitute “a fine of 6 penalty units”.

**205 At the end of the Act**

Add:

## **Schedule 6—Anindilyakwa Land Trust**

Note: See subsection 4(2A).

### **1 Anindilyakwa Land Trust**

The boundaries of the land to be held by the Anindilyakwa Land Trust are the areas of Groote Eylandt and Bickerton Island and every other island wholly within the area bounded by the lines commencing at a point latitude 13 degrees 30 minutes south and longitude 136 degrees 15 minutes east; thence east by the parallel of latitude 13 degrees 30 minutes south to its intersection with the meridian of longitude 137 degrees east; thence south by the meridian of longitude 137 degrees east to its intersection with the parallel of latitude 14 degrees 30 minutes south; thence west by the parallel of latitude 14 degrees 30 minutes south to its intersection with the meridian of longitude 136 degrees 20 minutes east; thence north westerly to a point of latitude 13 degrees 47 minutes 30 seconds south and longitude of 136 degrees 3 minutes east; thence north easterly to the point of commencement.

## **Part 2—Application and transitional provisions**

### **206 Application—audit reports**

#### *Land Councils*

- (1) Paragraph 193X(1)(ca) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to the activities or operations of a Land Council carried out after the commencement of that item.

#### *Persons receiving certain amounts under section 35 of the Aboriginal Land Rights (Northern Territory) Act 1976*

- (2) Paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to amounts received by a body corporate or other person after the commencement of that item (including amounts received under a determination made before that commencement).
- (3) However, for amounts received under subsection 35(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* in accordance with an agreement mentioned in that subsection, the agreement must also have been made after that commencement.

#### *Persons receiving amounts under subsection 64(4) of the Aboriginal Land Rights (Northern Territory) Act 1976*

- (4) Paragraph 193X(1)(cc) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to amounts received by an individual or organisation after the commencement of that item.

### **208 Application—transfers of land between Land Trusts**

The amendments made by items 42 and 49 apply in relation to transfers made after the commencement of those items.

### **209 Application—Land Trust grants of estates or interests in land**

*Ministerial consent for grants of estate or interests by Land Trust*

- (1) The amendment made by item 43 applies in relation to grants of estates or interests after the commencement of that item.

*Land Trust authorisations*

- (2) The amendment made by item 45 applies in relation to grants of estates or interests either before or after the commencement of that item.

**210 Application—entry into contracts**

The amendment made by item 60 applies in relation to contracts entered into after the commencement of that item.

**211 Transitional—Land Council delegations**

- (1) For the purposes of subsection 28(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, the power of a Land Council to give consent under section 40 of that Act (as in force immediately before the commencement of the *Aboriginal Land Rights (Northern Territory) Amendment Act (No. 3) 1987*) is not delegable under that subsection.
- (2) For the purposes of subsection 28(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, the power of a Land Council to give consent under section 40 of that Act (as in force immediately before the commencement of the *Aboriginal Land Rights (Northern Territory) Amendment Act (No. 3) 1987*) is delegable under that subsection.

**212 Application—disclosure of pecuniary interests by Land Council members**

The amendment made by item 67 applies in relation to interests arising before or after the commencement of that item.

**213 Application—Land Council committees**

*Appointments*

- (1) The amendments made by item 68 and item 70 (in so far as it inserts subsections 29A(2) and (3) of the *Aboriginal Land Rights (Northern Territory) Act 1976*) apply in relation to committees appointed after the commencement of those items.

*Minutes*

- (2) Subsection 29A(6) of the *Aboriginal Land Rights (Northern Territory) Act 1976* and subsection 29A(7) of that Act (in so far as it relates to minutes of committee meetings), as inserted by item 70, apply in relation to meetings held after the commencement of that item.

**214 Application—minutes of Land Council meetings**

The amendment made by item 73 applies in relation to meetings held after the commencement of that item.

**215 Application and transitional—Land Council may charge fees for services**

- (1) The amendment made by item 74 applies in relation to services provided after the commencement of that item.
- (2) Despite the repeal of subsection 48J(5) of the *Aboriginal Land Rights (Northern Territory) Act 1976* made by item 162, that subsection continues to apply after the commencement of that item in relation to a payment made after that commencement under an agreement made before that commencement.

**216 Application—estimates of Land Council costs**

- (1) The amendments made by items 75, 77 and 80 apply in relation to estimates submitted after the commencement of those items.
- (2) The amendments made by items 78 and 79 apply in relation to financial years beginning on or after the commencement of those items.

**217 Application—application of moneys of Land Council**

The amendments made by items 81, 84, 89, 93, 95, 98 and 181 apply in relation to financial years beginning on or after the commencement of those items.

**218 Transitional—amounts held in trust under subsection 35(7) of the *Aboriginal Land Rights (Northern Territory) Act 1976***

- (1) If, immediately before the commencement of this item, an amount is held by a Land Council in trust under subsection 35(7) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Council

must, as soon as practicable after that commencement, pay the amount to the bodies concerned.

- (2) Subsection 35(11) of that Act applies in relation to the payment (which is about the payment of interest).
- (3) Subitem (1) applies despite subsection 35(9) of that Act.

**219 Transitional—amounts held in trust for a body covered by subsection 35(12) of the *Aboriginal Land Rights (Northern Territory) Act 1976***

- (1) If, immediately before the commencement of this item, an amount is held by a Land Council in trust under section 35 of the *Aboriginal Land Rights (Northern Territory) Act 1976* for a body covered by subsection 35(12) of that Act, the Council must, as soon as practicable after that commencement, pay the amount to the body.
- (2) Subsection 35(11) of that Act applies in relation to the payment (which is about the payment of interest).
- (3) Subitem (1) applies despite subsection 35(9) of that Act.

**220 Application—Land Council determinations under section 35 of the *Aboriginal Land Rights (Northern Territory) Act 1976***

Section 35A of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 101, applies in relation to determinations made after the commencement of that item.

**221 Transitional—old Land Council determinations under section 35 of the *Aboriginal Land Rights (Northern Territory) Act 1976* of limited effect**

A determination of a Land Council:

- (a) made under subsection 35(2) or (3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* before this item commences; and
- (b) that is in force immediately before the end of the period of 5 years beginning on the day on which this item commences;

has no effect after the end of that period in relation to moneys paid to the Council after the end of that period.



**222 Application—spending of money received from Land Council under the *Aboriginal Land Rights (Northern Territory) Act 1976***

- (1) Sections 35B and 35C of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 101, apply in relation to amounts received by a body corporate after the commencement of that item (including amounts received under a determination made before that commencement).
- (2) However, for amounts received under subsection 35(3) of that Act in accordance with an agreement mentioned in that subsection, the agreement must also have been made after that commencement.

**223 Application—Land Council annual report**

Section 37 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 102, applies in relation to financial years ending after the commencement of that item.

**224 Application and transitional—mining**

*Applications for consent to grant of exploration licence*

- (1) The amendments made by items 104, 108, 109 and 119 apply in relation to applications made under subsection 41(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* after the commencement of those items.
- (2) The amendment made by item 111 applies in relation to decisions made by a Land Council after the commencement of that item.
- (3) The amendment made by item 117 applies in relation to decisions made by the Minister after the commencement of that item.
- (4) If:
  - (a) within the period of 12 months before the commencement of this item, an application was made under section 41 of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
  - (b) immediately before that commencement, the Land Council had not made a decision in relation to the application under subsection 42(1) of that Act;

then subsections 42(13) to (20) of that Act, as inserted by this Act, are taken to apply in relation to the application.

(5) If:

- (a) outside the period of 12 months before the commencement of this item, an application was made under section 41 of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
- (b) before that commencement, the applicant and the Land Council concerned had agreed to a period (the ***agreed period***) under paragraph 42(13)(b) of that Act; and
- (c) the day before that commencement was within the agreed period and before the end of that day the Land Council had not made a decision in relation to the application under subsection 42(1) of that Act;

then:

- (d) subject to paragraph (e), subsections 42(13) to (20) of that Act, as inserted by this Act, are taken to apply in relation to the application; and
- (e) on the day this item commences, the applicant and the Land Council concerned are taken to have agreed (under paragraph 42(13)(b) of that Act as inserted by this Act) to a 2 year extension beginning on the day this item commences.

(6) If:

- (a) outside the period of 12 months before the commencement of this item, an application was made under section 41 of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
- (b) before that commencement, the Minister had determined a period (the ***determined period***) under paragraph 42(13)(c) of that Act; and
- (c) the day before that commencement was within the determined period and before the end of that day the Land Council had not made a decision in relation to the application under subsection 42(1) of that Act;

then:

- (d) subject to paragraph (e), subsections 42(13) to (20) of that Act, as inserted by this Act, are taken to apply in relation to the application; and
- (e) on the day this item commences, the applicant and the Land Council concerned are taken to have agreed (under paragraph 42(13)(c) of that Act as inserted by this Act) to a 12 month extension beginning on the day this item commences.

*Consent to negotiate*

- (7) The amendments made by items 106 and 107 apply in relation to consents given by the Northern Territory Mining Minister (referred to in subsection 41(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*) after the commencement of those items.

*Notification of decisions to consent or refuse to consent to grant of exploration licence*

- (8) The amendment made by item 112 applies in relation to consents, or refusals to consent, to the grant of an exploration licence that occur after the commencement of that item.

*Cancellation of exploration licence*

- (9) Subsection 47(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 132, applies to consents given before or after the commencement of that item.
- (10) If:
- (a) a Land Council had given a notice under paragraph 47(1)(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as in force before the commencement of this item); and
  - (b) immediately before the commencement of this item, the Minister had not made a decision as to whether subsection 47(2) of that Act applied;
- then:
- (c) the Minister is taken to have received a notice from the Land Council under paragraph 47(1)(b) of that Act (as in force after the commencement of this item); and
  - (d) the Minister is taken to have received the notice on the day the Minister received it under paragraph 47(1)(b) of that Act (as in force before the commencement of this item).

*Cancellation of mining interest*

- (11) If:
- (a) an intending miner had sent a statement to the Minister under subsection 46(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as in force before the commencement of this item); and

- (b) immediately before the commencement of this item, the Minister had not made a decision as to whether subsection 47(4) of that Act applied;

then:

- (c) the Minister is taken to have received a statement from the intending miner as mentioned in subsection 47(3) of that Act (as in force after the commencement of this item); and
- (d) the Minister is taken to have received the statement on the day the Minister received it under subsection 46(2) of that Act (as in force before the commencement of this item).

*Refusals to consent to grant of exploration licence*

- (12) The amendments made by items 134, 136, 137, 139, 140, 142 and 144 apply in relation to refusals to consent to the grant of an exploration licence that occur after the commencement of those items.

**225 Application—acting Aboriginal Land Commissioner**

The amendment made by item 171 applies in relation to appointments made either before or after the commencement of that item.

**226 Application and transitional—Aboriginals Benefit Account**

*Payments from the Account*

- (1) The amendments made by items 173 and 174 apply in relation to determinations made under subsection 64(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* in a financial year beginning on or after the commencement of those items.
- (2) The amendment made by item 179 applies in relation to payments made under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976* after the commencement of that item.

*Transitional*

- (3) If, before the commencement of this item, a Land Council submitted estimates, under subsection 34(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, for a financial year beginning on or after that commencement, paragraph 64(1)(b) of that Act does not apply to

determinations of the Minister under subsection 64(1) of that Act in that year in relation to the Council.

**227 Application—Account Advisory Committee**

Subsection 65(6) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 186, applies in relation to appointments or elections made after the commencement of that item.

**228 Application—traditional land claims**

- (1) Subparagraph 67A(6)(b)(ii) and subsections 67A(7), (8) and (9) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, as inserted by item 192, apply in relation to applications made before the commencement of that item.
- (2) The amendment made by item 193 applies in relation to grants of estates or interests made after the commencement of that item in relation to applications referred to in paragraph 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* made before that commencement.

**229 Transitional—existing loan conditions continue in operation**

If:

- (a) a loan was made under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976* before the commencement of this item; and
- (b) there are conditions of the loan in force immediately before that commencement;

then those conditions continue to apply after that commencement.

**230 Transitional—rules for Land Council meetings**

Rules of a Land Council made under subsection 31(7) of the *Aboriginal Land Rights (Northern Territory) Act 1976* that were in force immediately before the commencement of this item continue to have effect after that commencement as if they had:

- (a) been made under that subsection as in force after that commencement; and
- (b) been approved by the Minister under subsection 31(7B) of that Act as in force after that commencement.

### **231 Transitional—Land Council delegations**

- (1) A delegation of a Land Council in force under subsection 28(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* immediately before the commencement of this item in relation to:
- (a) the Chair or another member of the Council; or
  - (b) a member of the staff of the Council;
- has effect, after that commencement, as if it had been made under that subsection after that commencement.
- (2) A delegation of a Land Council in force under subsection 28(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* immediately before the commencement of this item, in relation to a committee appointed under section 29A of that Act, has effect, after that commencement, as if it had been made under subsection 28(2) of that Act after that commencement.

### **232 Transitional—Ministerial delegations**

A delegation in force under subsection 76(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* immediately before the commencement of this item has effect, after that commencement, as if it had been made under that subsection after that commencement.

### **233 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Act.

## **Part 3—Review of mining provisions**

### **234 Review of mining provisions**

- (1) The Minister must cause an independent review of the operation of Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* to be undertaken as soon as practicable after the fifth anniversary of the commencement of this item.
  - (2) The persons who undertake such a review must give the Minister a written report of the review.
  - (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- 

*[Minister's second reading speech made in—  
House of Representatives on 31 May 2006  
Senate on 20 June 2006]*

(78/06)

---